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SUPERIOR COURT OF THE STATE OF CALIFORNIA
IN AND FOR THE COUNTY OF SAN DIEGO

SAN DIEGO TENANT UNION; and
DARLISA MCDOWELL,

Plaintiffs and Petitioners,

v.

SAN DIEGO HOUSING COMMISSION; and
DOES 1-20, inclusive,

Defendants and Respondents.

Case No.: 37-2019-00012582-CU-WM-CTL

**VERIFIED PETITION FOR WRIT OF
MANDATE AND COMPLAINT FOR
DECLARATORY AND INJUNCTIVE
RELIEF:**

1. Housing Discrimination in Violation of the California Fair Employment and Housing Act (Gov. Code §§ 12900 *et seq.*)
2. Housing Discrimination in Violation of the Unruh Civil Rights Act (Civ. Code §§ 51 *et seq.*)
3. Breach of Contract (Civ. Code § 1559)
4. Discrimination in State-Funded Programs (Gov. Code §§ 11135, 11139)
5. Declaratory and Injunctive Relief (Code of Civ. Proc. §§ 526 and 1060)
6. Writ of Ordinary Mandate (Code of Civ. Proc. § 1085)

1 Plaintiffs and Petitioners SAN DIEGO TENANT UNION, and DARLISA MCDOWELL
2 (“Plaintiffs”) allege as follows against Defendants SAN DIEGO HOUSING COMMISSION and
3 DOES 1-20 (“Defendants”):

4 **INTRODUCTION**

5 1. San Diego Housing Commission (hereinafter “SDHC”) is a City of San Diego agency
6 responsible for administering federal Section 8 program funds and public housing. SDHC sets
7 payment standards for the Section 8 program which determine the monthly assistance that may
8 be paid for any family. The payment standards determine the areas within which Section 8
9 participants will be able to afford rental units.

10 2. SDHC sets payment standards for the Section 8 program significantly below actual
11 market rents, which perpetuates racial segregation and the concentration of poverty in the City of
12 San Diego. SDHC’s actions in setting below-market voucher payment standards prevents
13 families with Section 8 from obtaining dwelling units in high-opportunity, low-poverty, and
14 predominantly White areas. SDHC’s actions in setting below-market payment standards results
15 in families with Section 8 being able to use their vouchers only in high-poverty, low-opportunity,
16 and racially segregated areas.

17 3. SDHC has administered its Section 8 program in a discriminatory fashion in violation of
18 state law, federal law, and SDHC’s contractual obligations.

19 4. This suit seeks injunctive and declaratory relief to end SDHC payment standard setting
20 policies and practices that are perpetuating racial segregation and the concentration of poverty in
21 the City of San Diego, and to require SDHC to set payment standards at least as high as the
22 levels recommended by HUD for the San Diego area.

23 **PARTIES**

24
25 5. Plaintiff and Petitioner SAN DIEGO TENANT UNION (hereinafter “Union”) is a
26 tenants’ rights association that seeks to create opportunities for low-income City Heights
27 residents to learn about their rights as tenants, become resident leaders, have access to legal
28 guidance to remediate conflicts with landlords, and advocate for city-wide changes in housing

1 policy. Union members pay dues and are residents throughout the City of San Diego. The
2 majority of its members are minority families or individuals who are participating in or are wait
3 listed for SDHC's Section 8 program. Through community engagement, organizing, and
4 outreach, the Union educates its members about tenant rights and residential segregation. The
5 Union provides assistance to members seeking to obtain and maintain rental units in low-
6 poverty, high-opportunity neighborhoods, outside of racially segregated areas of San Diego.
7 SDHC's actions in setting payment standards below market rents directly harms members of the
8 Union by reducing the number of units available in low-poverty, high-opportunity, and
9 predominantly White areas available for use by Section 8 participants. SDHC setting vouchers
10 below market value results in Union members facing very limited options for available housing
11 units throughout the city. This is especially pronounced in low-poverty, high-opportunity,
12 predominantly White areas, where rents average higher than other parts of the city. Families
13 seeking units in low-poverty, high-opportunity, and predominantly White areas have fewer units
14 available to them, and are required by SDHC to pay 50 percent of their income towards rent to
15 secure the few units that are available, resulting in housing instability. The Union and its
16 members have a beneficial interest in SDHC complying not only with state fair housing and
17 antidiscrimination laws, but also SDHC's contractual obligations to comply with federal fair
18 housing and antidiscrimination laws.

19 6. Plaintiff and Petitioner Darlisa McDowell is a resident of San Diego, African-American,
20 and a Section 8 participant. She lives with, and cares for, her five children and elderly father. She
21 is responsible for finding a unit available on the private market that has a rent at or below the
22 payment standard set by SDHC. She has struggled to obtain housing in a low-poverty, high-
23 opportunity area. Despite her efforts, she has been unsuccessful because SDHC has set the
24 payment standards for the City of San Diego woefully below fair market rent. She has been
25 limited to, and continues to be limited to, using her Section 8 voucher in a high-poverty, racially
26 segregated neighborhood with less adequate services and neighborhood amenities and low
27 performing schools. The neighborhood she lives in (Zip Code 92113) is 9 percent White (Not
28 Hispanic or Latino) and 34.5 percent of its residents live below the Federal Poverty Level.

SDHC has set the payment standard for her neighborhood lower than the market rent. As a result, in addition to paying the statutory percentage of her family's fixed income towards rent each month, she is responsible for paying for the amount above the payment standard, even if it causes her to pay more than 40 percent of her fixed income towards rent. She prohibits her five children, particularly her four sons, from playing outside of her home because the crime and gang-related activity in her neighborhood causes her to fear for their safety. She has to pay towards a YMCA membership each month for her sons to ensure they have a safe place to go after school. She is interested in living in a more racially and economically integrated community, with higher performing schools and a safer neighborhood for her children. She has a beneficial interest in SDHC complying with not only state fair housing and antidiscrimination laws, but also SDHC's contractual obligations to comply with federal fair housing and antidiscrimination laws.

7. Defendant and Respondent SAN DIEGO HOUSING COMMISSION is a City of San Diego agency charged with administering federal Section 8 program funds and public housing. It receives funds from both the federal government and the State of California. It owns, leases, and manages more than 3,500 rental housing units in the City of San Diego. It is responsible for carrying out the laws of the State of California and conforming ordinances, regulations, and policies of the Department of Housing and Urban Development to the requirements of state law. It is based in and conducts business in San Diego, California.

8. Plaintiffs are ignorant of the true names and capacities of the persons or entities named herein as DOES 1-20, but are informed and believe, and on that basis allege, that each of such defendants and respondents is legally required to act in the manner herein sought. Plaintiffs will seek leave to amend this complaint when said defendants' and respondents' true names and capacities have been ascertained.

JURISDICTION AND VENUE

9. This Court has personal jurisdiction over the Defendant because the agency is located in and conducts business in San Diego.

1 10. This Court has subject matter jurisdiction over the claims asserted because relief is
2 sought pursuant to Gov. Code §§ 11135, 11139, and 12900 *et seq.*, Civ. Code §§ 51 *et seq.*, Civ.
3 Code § 1559, and Code of Civ. Proc. §§ 526, 1060, and 1085.

4 11. Venue is proper in this county as the acts upon which this action is based occurred in this
5 county, and all parties are headquartered in this county.

6 FACTS

7 **Federal Section 8 Program**

9 12. The Housing Choice Voucher Program (hereinafter “Section 8”) is a federal program
10 that provides financial assistance in the form of a rent subsidy, or voucher, to help low-income
11 families secure and maintain decent, safe, and sanitary housing in the private market. The
12 Department of Housing and Urban Development (hereinafter “HUD”) oversees the federal
13 program’s administration. Families with Section 8 vouchers pay approximately 30 percent of
14 their income towards the gross rent of a unit, which includes the contract rent and the cost of
15 utilities. The portion of the rent remaining after the families’ contribution is paid out of Section 8
16 funds from the local agency responsible for administering the Section 8 program. San Diego
17 Housing Commission is responsible for administering the Section 8 program for participants
18 residing in the City of San Diego.

19 13. Payment standards determine the monthly assistance that may be paid for any family
20 participating in the Section 8 program. Federal Section 8 legislation and regulations provide
21 guidelines for setting local payment standards. Payment standards are calculated based on the
22 fair market rents for the area in which the Section 8 voucher will be used. Federal regulations
23 direct payment standards for each size of dwelling unit in a market area to be not less than 90
24 percent and not more than 110 percent of the fair market rent for the same size of dwelling unit
25 in the same market area. (42 U.S.C. § 1437f(o)(1)(B).) When a Section 8 participant is seeking a
26 dwelling unit, the participant must find a unit with rent that is equal to or less than the payment
27 standard. If the rent is higher than the payment standard, the voucher holder is responsible for
28

1 their portion of rent plus any amount above the payment standard (but note that upon initial
2 lease-up, the family's share cannot be more than 40 percent of adjusted income). The payment
3 standard therefore limits the units that the voucher holder can access. As a result, the voucher
4 holder must seek rental units that are at or below the payment standard.

5 14. HUD establishes fair market rents for existing or newly constructed rental dwelling
6 units of various types and sizes in the market area suitable for occupancy by persons assisted by
7 the Section 8 program. (42 U.S.C. § 1437f(o)(1)(B) incorporating 42 U.S.C. § 1437f(c)(1).)
8 Historically, HUD established a single payment standard across an entire metropolitan area,
9 based on the fair market rent at the 40th or 50th percentile of that metropolitan area's rent
10 distribution. The units suitable for occupancy by Section 8 participants are "standard quality,
11 non-luxury housing." The fair market rent for this type of housing is used to determine both
12 whether a dwelling unit is eligible for the Section 8 program, and the amount of federal funds
13 that can be paid on behalf of a Section 8 participant. (42 U.S.C. § 1437f(o)(2), (3).) Annually,
14 HUD establishes fair market rents for metropolitan and non-metropolitan areas. In the San Diego
15 metropolitan area, HUD has generally set fair market rents at the zip code level, enabling
16 families to access approximately 50 percent of the rental units in each zip code. As will be
17 discussed below, relying on its "regulatory flexibility," SDHC has refused to follow HUD
18 guidelines, and has set payment standards significantly below the levels set by HUD.

19 **San Diego Housing Commission**

20
21 15. The City of San Diego receives federal funding from HUD for Section 8 Housing
22 Choice Vouchers ("HCV"). HCVs are referred to as "Section 8 vouchers" because of their origin
23 in Section 8 of the U.S. Housing Act. SDHC is responsible for the administration of the Section
24 8 voucher program.

25 16. SDHC receives funding from the State of California.

26 17. SDHC is engaged in the business of owning, leasing, and managing more than 3,500
27 rental housing units, including 189 federal public housing units, and administering the Section 8
28 program. Among the SDHC-owned units are 1,366 former public housing units for which HUD

transferred full ownership and operating authority to SDHC in 2007, at which point SDHC provided the residents with Section 8 vouchers.

18. Each year, HUD establishes fair market rents for the City of San Diego to use in the administration of its Section 8 program.

Small Area Fair Market Rents

19. The fair market rents established by HUD for zip codes within the City of San Diego are Small Area Fair Market Rents (hereinafter “SAFMR”). (24 C.F.R. § 888.113; Notice of Fiscal Year 2019 Fair Market Rents, 83 FR 44644.)

20. In the November 16, 2016 Federal Register notice “Small Area Fair Market Rents in Housing Choice Voucher Program Values for Selection Criteria and Metropolitan Areas Subject to Small Area Fair Market Rents,” HUD identified public housing authorities in 24 metropolitan areas that would be subject to SAFMRs because they met the following requirements:

- (i) There are at least 2,500 HCV (vouchers) under lease;
- (ii) At least 20 percent of the standard quality rental stock, within the metropolitan FMR (fair market rent) area is in small areas (ZIP codes) where the Small Area FMR is more than 110 percent of the metropolitan FMR;
- (iii) The percentage of voucher families living in concentrated low income areas relative to all renters within the area must be at least 25 percent;
- (iv) The measure of the percentage of voucher holders living in concentrated low income areas relative to all renters within these areas over the entire metropolitan area exceeds 155 percent (or 1.55); and
- (v) The vacancy rate for the metropolitan area is higher than 4 percent.

(81 FR 80678).

21. As explained in the SAFMR Final Rule (hereinafter “Final Rule”), “the main benefit of SAFMRs is that, through setting rental subsidy amounts at a more local level, assisted households will be more able to afford homes in areas of high opportunity than under current policy. Such moves are expected to benefit both individual households, for example, through access to better schools or safer neighborhoods, and areas as a whole through reducing concentrated neighborhood poverty.” (81 FR 80569.)

1 22. In the Purpose of the Regulatory Action section of the Final Rule, HUD addresses the
2 purpose behind SAFMRs which is to decrease the concentration of poverty and racial
3 segregation within the Section 8 program. HUD explains how its previously existing efforts to
4 address high concentrations of voucher holders by raising the level of the fair market rent from
5 the 40th percentile to the 50th percentile “has not been targeted to areas of opportunity, and
6 consequently, this formula has not proven effective in addressing the problem of concentrated
7 poverty and economic and racial segregation in neighborhoods.” (81 FR 80567.)

8 23. The Final Rule was aimed at aligning the Section 8 program with HUD’s statutory
9 mandates to ensure fair housing and avoid contributing to concentrated poverty. SAFMRs
10 increase the share of households that can use their vouchers to access rental units in low-poverty
11 areas, instead of in racially segregated areas with high concentrations of poverty.

12 24. The Final Rule targeted 24 metropolitan areas, including the City of San Diego. In these
13 areas, the majority of voucher holders—disproportionately consisting of racial minorities—live
14 in racially segregated, voucher-concentrated areas of poverty because the payment standards do
15 not reflect the fair market rents of neighborhoods. In these 24 areas, the Section 8 program has
16 perpetuated, rather than ameliorated, racial segregation and concentrations of residential poverty.

17 25. Pursuant to the Final Rule, SAFMRs would allow families with vouchers—a population
18 in which racial minorities are overrepresented—to move from racially segregated neighborhoods
19 with concentrated poverty to higher-opportunity neighborhoods within each of the 24
20 metropolitan areas.

21 26. The metropolitan areas targeted by the Final Rule were chosen because of their high
22 concentrations of voucher holders living in concentrated low-income areas relative to all renters
23 within that area. The program’s use of a single payment standard across each metropolitan area
24 contributed to this concentration of poverty, because the homes affordable to voucher holders
25 were concentrated in a limited number of neighborhoods with low rents. With SAFMRs, fair
26 market rent would be set based on the rents in each zip code, instead of based on the rents in an
27 entire metropolitan area. By setting payment standards at the level of the zip code, more units
28 would be available in higher rent, low-poverty areas. The metropolitan areas chosen each has

significant voucher concentration challenges and market conditions where establishing fair market rents by zip code areas has the potential to significantly increase opportunities for voucher families. (81 FR 80567).

27. San Diego was among the 24 metropolitan areas identified by HUD because of its high concentration of voucher tenants living in concentrated low-income areas (defined as census tracts in the metropolitan area with a poverty rate of 25 percent or more, or any tract in the metropolitan area where at least 50 percent of the households earn less than 60 percent of the area median income adjusted for tract average household size).

28. Each year since San Diego was identified in the SAFMR Federal Register Notice, the fair market rents established and published by HUD for SDHC to use in the Section 8 program have been zip-code based fair market rents.

SDHC's Administration of the Section 8 Program

29. Each year since San Diego was identified in the SAFMR Federal Register Notice, SDHC has failed to increase its payment standard to align with the zip-code based fair market rent.

30. SDHC uses a three-tier system to set payment standards. The current payment standards, dated December 12, 2018, went into effect January 1, 2019. However, voucher recipients will not benefit from the new payment standards until their biannual recertification. For Plaintiffs and many Section 8 families, this will not occur until late 2020.

31. SDHC's 2019 payment standards are not based on current fair market rents. The payment standards are set significantly below fair market rent.

32. SDHC's prior payment standards dated February 15, 2018, were not based on fair market rents. The payment standards were set below fair market rents.

33. SDHC's prior payment standards dated January 9, 2018, were not based on fair market rents. The payment standards were still set significantly below fair market rent.

34. SDHC's prior payment standards dated December 7, 2017, are identical to SDHC's payment standards dated January 9, 2018. These payment standards were not based on fair market rents. The payment standards were set significantly below fair market rent.

35. In 10 San Diego zip codes which constitute the lowest tier of SDHC's three-tier payment standards, SDHC did not increase the payment standard for more than three years, despite HUD data showing that rents significantly increased during that time. The payment standard that was in effect in 2015 remained in effect until January 1, 2019, and will remain in effect until voucher participants' next biannual recertification. In these 10 zip codes (in red in the below chart), the payment standard was set below fair market rents, and remains below fair market rent.

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Zip Code	2015 SDHC Payment Standard	2016 SDHC Payment Standard	2017 SDHC Payment Standard	2018 SDHC Payment Standard	2018 HUD Fair Market Rent	2019 SDHC Payment Standard	2019 HUD Fair Market Rent
92037	\$1,564	\$1,564	\$1,564	\$1,740	\$2,220	\$1,810	\$2,310
92101	\$1,304	\$1,304	\$1,304	\$1,567	\$2,500	\$1,630	\$2,880
92102	\$1,304	\$1,304	\$1,304	\$1,304	\$1,570	\$1,356	\$1,580
92103	\$1,304	\$1,304	\$1,304	\$1,304	\$1,930	\$1,630	\$2,050
92104	\$1,304	\$1,304	\$1,304	\$1,304	\$1,610	\$1,356	\$1,710
92105	\$1,304	\$1,304	\$1,304	\$1,304	\$1,570	\$1,356	\$1,470
92106	\$1,564	\$1,564	\$1,564	\$1,740	\$2,000	\$1,810	\$2,420
92107	\$1,304	\$1,304	\$1,304	\$1,567	\$1,990	\$1,630	\$2,090
92108	\$1,304	\$1,304	\$1,304	\$1,740	\$2,430	\$1,810	\$2,680
92109	\$1,304	\$1,304	\$1,304	\$1,567	\$2,180	\$1,630	\$2,310
92110	\$1,304	\$1,304	\$1,304	\$1,567	1,940	\$1,630	\$2,040
92111	\$1,304	\$1,304	\$1,304	\$1,567	\$1,760	\$1,630	\$1,840
92113	\$1,304	\$1,304	\$1,304	\$1,304	\$1,570	\$1,356	\$1,420
92114	\$1,304	\$1,304	\$1,304	\$1,304	\$1,570	\$1,356	\$1,470
92115	\$1,304	\$1,304	\$1,304	\$1,304	\$1,570	\$1,356	\$1,640
92116	\$1,304	\$1,304	\$1,304	\$1,304	\$1,620	\$1,356	\$1,720
92117	\$1,304	\$1,304	\$1,304	\$1,567	\$1,850	\$1,630	\$1,950
92119	\$1,564	\$1,564	\$1,564	\$1,740	\$1,820	\$1,810	\$2,150
92120	\$1,564	\$1,564	\$1,564	\$1,740	\$1,820	\$1,810	\$2,120
92121	\$1,304	\$1,304	\$1,304	\$1,740	\$2,160	\$1,810	\$2,550
92122	\$1,304	\$1,304	\$1,304	\$1,740	\$2,370	\$1,810	\$2,490
92123	\$1,304	\$1,304	\$1,304	\$1,740	\$2,120	\$1,810	\$2,220
92124	\$1,564	\$1,564	\$1,564	\$1,740	\$2,240	\$1,810	\$2,570
92126	\$1,304	\$1,304	\$1,304	\$1,740	\$2,100	\$1,810	\$2,240
92127	\$1,564	\$1,564	\$1,564	\$1,740	\$2,230	\$1,810	\$2,580
92128	\$1,564	\$1,564	\$1,564	\$1,740	\$2,260	\$1,810	\$2,370
92129	\$1,304	\$1,304	\$1,304	\$1,740	\$1,870	\$1,810	\$1,970
92130	\$1,564	\$1,564	\$1,564	\$1,740	\$2,500	\$1,810	\$2,910
92131	\$1,564	\$1,564	\$1,564	\$1,740	\$2,500	\$1,810	\$2,910
92139	\$1,304	\$1,304	\$1,304	\$1,567	\$1,670	\$1,630	\$1,810
92145	\$1,304	\$1,304	\$1,304	\$1,567	\$1,570	\$1,630	\$1,790
92154	\$1,304	\$1,304	\$1,304	\$1,304	\$1,730	\$1,356	\$1,790
92173	\$1,304	\$1,304	\$1,304	\$1,304	\$1,570	\$1,356	\$1,490

36. SDHC's payment standards are significantly below fair market rents for each zip code in San Diego. The payment standards are woefully below the SAFMRs released by HUD for each zip code in the City of San Diego. In addition to being woefully below fair market rents, SDHC requires Section 8 program participants to pay up to 50 percent of their income towards rent if they wish to live in a higher rent, lower-poverty, predominantly White zip code, imposing a severe housing cost burden on these families. Federal best practices identify families that pay more than 30 percent of their income towards rent as rent burdened and in an unstable housing situation. Paying 50 percent of one's income towards rent results in housing instability, and an increased risk of eviction, particularly for low-income families and individuals on a fixed-income. SDHC's Annual Plan for 2019 states:

Re-proposed in the Fiscal Year 2012 Plan Amendment to adopt a policy allowing SDHC to calculate payment standards below 90% of the FMR in high-poverty areas. A Fiscal Year 2015 activity increased the rent burden to 50 percent program wide. Thus, the component eliminating the 40 percent rent burden is eliminated. Reproposed in the Fiscal Year 2018 MTW Annual Plan to increase flexibility related to determining payment standards. Payment standards are informed by hypothetical SAFMRs published by HUD, the information available at the time of the analysis. (2019 Annual Plan, p. 21.)

Modifies the 40 percent affordability cap to 50 percent at initial lease-up in order to increase housing choice for low-income households. (2019 Annual Plan, p. 16.)

SDHC's Moving to Work Designation

37. San Diego is a Moving to Work (hereinafter "MTW") public housing authority. The MTW Demonstration Program provides flexibility in the design and administration of housing assistance to eligible families, to reduce cost and achieve greater cost effectiveness in Federal expenditures, to give incentives to families with children where the head of household is working, seeking work, or is preparing for work by participating in job training, educational programs, or programs that assist people to obtain employment and become economically self-sufficient, and to increase housing choices for low-income families.

1 38. On April 25, 2018, SDHC's Chief Executive Officer testified before the U.S. House of
2 Representatives Committee on Financial Services on SDHC's MTW designation and the mission
3 of its program:

4
5 MTW has been especially significant in the expensive housing markets of California,
6 including San Diego. The MTW program has allowed SDHC to encourage families and
7 reward them for productive activities. SDHC's MTW initiatives provide opportunities
8 for Section 8 Housing Choice Voucher rental assistance participants and public housing
9 residents to become more financially self-reliant and improve their housing choices as
SDHC achieves efficiencies in the administration of federal funding.

(emphasis added.)

10 39. A MTW public housing authority that is identified as a designated SAFMR area in the
11 Final Rule is exempt from implementing SAFMRs if it has an alternative payment standard
12 policy in its HUD-approved Annual MTW Plan. (Notice PIH 2018-01(6).)

13 40. On January 14, 2009, SDHC entered into a written contract, entitled Amended and
14 Restated Moving to Work Agreement (hereinafter "the MTW Agreement"), with HUD. The
15 MTW Agreement specified that its term would continue until the end of SDHC's 2018 fiscal
16 year, unless such term was otherwise extended by HUD. On April 14, 2016, HUD extended the
17 term of the MTW Agreement through 2028.

18 41. The terms of the MTW Agreement entered into between SDHC and HUD, including the
19 Annual Moving to Work Plan Certification of Compliance with Regulations, Board Resolution
20 to Accompany the Annual Moving to Work Plan (in Attachment B), the Statement of
21 Authorizations to Amended and Restated Moving to Work Agreement (Attachment C),
22 Community-Specific Authorizations (Attachment D), and the Housing Authority of the City of
23 San Diego Resolution (Appendix C), contain the following provisions:

- 24
25 a. "The Agency shall: [...] Assist substantially the same total number of eligible
26 low-income families under MTW, as would have been served absent the
27 demonstration." (MTW Agreement, p. 3).
28 b. "The Agency will comply with all applicable nondiscrimination and equal
opportunity requirements set forth in 24 C.F.R. § 5.105(a), and will administer its

1 programs and activities in a manner affirmatively to further fair housing.” (MTW
2 Agreement, p. 4).

- 3 c. “Even if HUD approves a MTW Plan that is inconsistent with an external
4 requirement, such as a state law, requirement, the Agency is still subject to the
5 external requirement.” (MTW Agreement, p. 10, FN 3.)
- 6 d. “The PHA will carry out the Plan in conformity of Title VI of the Civil Rights
7 Act of 1964, the Fair Housing Act, section 504 of the Rehabilitation Act of 1973,
8 and title II of the Americans with Disabilities Act of 1990.” (MTW Agreement,
9 p. 23 (Attachment B, p. 7)).
- 10 e. “The PHA will affirmatively further fair housing by examining their programs or
11 proposed programs, identify any impediments to fair housing choice within those
12 programs, address those impediments in a reasonable fashion in view of the
13 resources available and work with local jurisdictions to implement any of the
14 jurisdiction’s initiatives to affirmatively further fair housing that require the
15 PHA’s involvement and maintain records reflecting these analyses and actions .”
16 (MTW Agreement, p. 23 (Attachment B, p. 7)).
- 17 f. “The Agency reaffirms that it will comply with all applicable nondiscrimination
18 and equal opportunity requirements set forth in 24 C.F.R. § 5.105(a), and will
19 administer its programs and activities in a manner affirmatively to further fair
20 housing.” (MTW Agreement, p. 25 (Attachment C, p. 1)).
- 21 g. “Deconcentration Policy – The Agency is authorized to develop and adopt a local
22 policy designed to provide for deconcentration and income mixing in public
23 housing communities.” (MTW Agreement, p. 29 (Attachment C, p. 5)).
- 24 h. “The Agency is authorized to adopt and implement any reasonable policy to
25 establish payment standards, rents or subsidy levels for tenant-based assistance
26 that differ from the currently mandated program requirements of the 1937 Act
27 and its implementing regulations. The Agency is authorized to adopt any
28 reasonable policies to calculate the tenant portion of the rent that differ from the
currently mandated program requirements of the 1937 Act and its implementing
regulations.” (MTW Agreement, p. 33 (Attachment C, p. 9)).
- i. “The Agency is authorized to adopt and implement any reasonable policy to
establish payment standards, rents or subsidy levels for tenant-based assistance
that differ from the currently mandated program requirements of the 1937 Act
and its implementing regulations. The Agency is authorized to adopt any
reasonable policies to calculate the tenant portion of the rent that differ from the
currently mandated program requirements of the 1937 Act and its implementing
regulations.” (MTW Agreement, p. 33 (Attachment C, p. 9)).

1 j. "The Agency is authorized to determine contract rents and increases and to
2 determine the content of contract rental agreements that differ from the currently
3 mandated program requirements in the 1937 Act and its implementing
4 regulations." (MTW Agreement, p. 34 (Attachment C, p. 10)).

5 k. "The Agency is authorized to determine income qualifications for participants in
6 the rental assistance program that differ from the currently mandated program
7 requirements in the 1937 Act and its implementing regulations, as long as the
8 requirements that [...] substantially the same number of low-income persons are
9 assisted under the demonstration as would be without the MTW authorizations
10 contained herein" (MTW Agreement, p. 34 (Attachment C, p. 10)).

11 l. "That the Commission will continue to assist substantially the same total number
12 of eligible low-income families under MTW as would have been served if the
13 HUD funding sources had not been combined." (MTW Agreement, p. 40
14 (Appendix C, p. 2)).

15 m. "Authorizations Related to Section 8 Housing Choice Vouchers Only: Not
16 withstanding any language in this Agreement or its attachments, the Agency shall
17 follow the regulations at 24 CFR 941.202, 941.203, and 983.57." (MTW
18 Agreement, p. 44 (Appendix D)). 24 CFR 941.202, which was removed Oct. 24,
19 2013 (78 FR 63748, 63793) addresses low-income housing's impact on racial
20 segregation and the concentration of poverty.¹

21 n. "That the program complies with Fair Housing and Equal Opportunity
22 Requirements, as listed in 24 CFR Part 5, as well as the Americans with
23 Disabilities Act of 1990." (MTW Agreement, p. 40 (Appendix C, p. 2)).

24 ¹ 24 CFR 941.202, which was removed Oct. 24, 2013 (78 FR 63748, 63793) ("The site for new
25 construction shall not be located in an area of minority concentration unless: The site and neighborhood
26 must be suitable from the standpoint of facilitating and furthering full compliance with the applicable
27 provisions of Title VI of the Civil Rights Act of 1964, Title VIII of the Civil Rights Act of 1968, E.O.
28 11063, and HUD regulations issued pursuant thereto.

(1) The site for new construction projects must not be located in:

(i) An area of minority concentration unless (A) sufficient, comparable opportunities exist for housing for
minority families, in the income range to be served by the proposed project, outside areas of minority
concentration, or (B) the project is necessary to meet overriding housing needs which cannot otherwise
feasibly be met in that housing market area. An "overriding need" may not serve as the basis for determining
that a site is acceptable if the only reason the need cannot otherwise feasibly be met is that discrimination
on the basis of race, color, religion, creed, sex, or national origin renders sites outside areas of minority
concentration unavailable; or

(ii) A racially mixed area if the project will cause a significant increase in the proportion of minority to
non-minority residents in the area.

[...]

(d) The site must promote greater choice of housing opportunities and avoid undue concentration of
assisted persons in areas containing a high proportion of low-income persons.")

1 42. SDHC claims that its payment standards are justified because it is a MTW jurisdiction
2 which does not have to abide by federal regulations that govern the administration of Section 8
3 funds. However, the MTW program does not exempt housing authorities from compliance with
4 federal fair housing laws and regulations. SDHC's claim that its setting of payment standards
5 that are woefully below market rents is "justified" by its participation in the MTW program is
6 false and is a pretext for discrimination. The MTW program specifically requires compliance
7 with fair housing laws and regulations.

8 43. By the terms of the contract, HUD agreed to permit SDHC to participate in the MTW
9 Demonstration to design and test innovative methods of providing housing and delivering
10 services to low-income families through the Section 8 voucher and project-based programs, and
11 SDHC agreed to comply with federal fair housing laws and regulations.

12 44. The intent of Congress in enacting the Section 8 program, the language of the statute, the
13 relevant legislative history, HUD's implementing regulations, and the contract between SDHC
14 and HUD is to provide affordable rental housing to low-income families, and to ensure low-
15 income families contribute towards rent no more than the Section 8 program deems reasonable.

16 45. The primary purpose of the MTW contract entered into between SDHC and HUD was to
17 provide housing assistance payments to low-income families in the City of San Diego.

18 46. The contract was made for Plaintiffs' benefit in that the contract governed SDHC's
19 administration of the Section 8 program which provides housing assistance payments to low-
20 income individuals and families in the City of San Diego.

21 47. SDHC Section 8 participants are the beneficiaries of the MTW contract entered into
22 between SDHC and HUD. As third party beneficiaries of the contract, Plaintiffs have the right,
23 pursuant to Civ. Code § 1559, to enforce the contract, and to bring an action to compel specific
24 performance.

25 48. SDHC agreed to abide by fair housing laws and regulations when it entered into the
26 MTW contract with HUD.

27 49. SDHC's actions setting and enforcing below-market payment standards constitute a
28 breach of the MTW Agreement. SDHC's actions setting payment standards are not in accordance

1 with SDHC's contractual obligations under its MTW Agreement. SDHC's actions make
2 dwelling units in predominantly White areas inaccessible because of race, and perpetuate racial
3 segregation in San Diego, in violation of fair housing laws specified in the MTW Agreement.

4 50. Three provisions of the MTW Agreement required SDHC to comply with
5 nondiscrimination and equal opportunity requirements set forth in 24 C.F.R. § 5.105(a): (1) "The
6 Agency will comply with all applicable nondiscrimination and equal opportunity requirements
7 set forth in 24 C.F.R. § 5.105(a), and will administer its programs and activities in a manner
8 affirmatively to further fair housing." (MTW Agreement, p. 4); (2) "The Agency reaffirms that it
9 will comply with all applicable nondiscrimination and equal opportunity requirements set forth
10 in 24 C.F.R. § 5.105(a), and will administer its programs and activities in a manner affirmatively
11 to further fair housing." (MTW Agreement, p. 25 (Attachment C, p. 1)); and (3) "That the
12 program complies with Fair Housing and Equal Opportunity Requirements, as listed in 24 CFR
13 Part 5, as well as the Americans with Disabilities Act of 1990." (MTW Agreement, p. 39
14 (Appendix C, p. 2)). 24 C.F.R. § 5.105(a) requires compliance with the following federal laws
15 and regulations:

16
17 Nondiscrimination and equal opportunity. The Fair Housing Act (42 U.S.C. 3601-19)
18 and implementing regulations at 24 CFR part 100 et seq.; Executive Order 11063, as
19 amended by Executive Order 12259 (3 CFR, 1959-1963 Comp., p. 652 and 3 CFR, 1980
20 Comp., p. 307) (Equal Opportunity in Housing Programs) and implementing regulations
21 at 24 CFR part 107; title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d-2000d-4)
22 (Nondiscrimination in Federally Assisted Programs) and implementing regulations at
23 24 CFR part 1; the Age Discrimination Act of 1975 (42 U.S.C. 6101-6107) and
24 implementing regulations at 24 CFR part 146; section 504 of the Rehabilitation Act of
25 1973 (29 U.S.C. 794) and implementing regulations at part 8 of this title; title II of the
26 Americans with Disabilities Act, 42 U.S.C. 12101 et seq. 24 CFR part 8; section 3 of the
27 Housing and Urban Development Act of 1968 (12 U.S.C. 1701u) and implementing
28 regulations at 24 CFR part 135; Executive Order 11246, as amended by Executive
Orders 11375, 11478, 12086, and 12107 (3 CFR, 1964-1965 Comp., p. 339; 3 CFR,
1966-1970 Comp., p. 684; 3 CFR, 1966-1970 Comp., p. 803; 3 CFR, 1978 Comp., p.
230; and 3 CFR, 1978 Comp., p. 264, respectively) (Equal Employment Opportunity
Programs) and implementing regulations at 41 CFR chapter 60; Executive Order 11625,
as amended by Executive Order 12007 (3 CFR, 1971-1975 Comp., p. 616 and 3 CFR,
1977 Comp., p. 139) (Minority Business Enterprises); Executive Order 12432 (3 CFR,
1983 Comp., p. 198) (Minority Business Enterprise Development); and Executive Order

12138, as amended by Executive Order 12608 (3 CFR, 1977 Comp., p. 393 and 3 CFR, 1987 Comp., p. 245) (Women's Business Enterprise).

51. SDHC violated these three MTW Agreement provisions by setting payment standards in a way that perpetuates racial segregation, and by failing to examine and address the effects of its payment setting policies and decisions on the racial composition of the areas affected and on the integrated housing choices available to minority SDHC Section 8 program participants in violation of 42 U.S.C. § 3608(e)(5) and 24 C.F.R. § 903.15(d), which requires housing authorities to administer its Section 8 program in a manner to affirmatively further the fair housing policies of the Fair Housing Act, 42 U.S.C. § 3601, *et seq.*

52. A provision of the MTW Agreement required SDHC to examine the payment setting policy and identify any impediments to fair housing in order to affirmatively further fair housing in the Section 8 program: “The PHA will affirmatively further fair housing by examining their programs or proposed programs, identify any impediments to fair housing choice within those programs, address those impediments in a reasonable fashion in view of the resources available and work with local jurisdictions to implement any of the jurisdiction’s initiatives to affirmatively further fair housing that require the PHA’s involvement and maintain records reflecting these analyses and actions.” (MTW Agreement, p. 23 (Attachment B, p. 7)).

53. SDHC failed to examine and address the effects of its payment setting policies and decisions on the racial composition of the areas affected and on the integrated housing choices available to minority SDHC Section 8 program participants in violation of this provision of the MTW Agreement.

54. A provision of the MTW Agreement required SDHC to adopt only reasonable policies to establish payment standards and the tenant’s portion of the rent: “The Agency is authorized to adopt and implement any reasonable policy to establish payment standards, rents or subsidy levels for tenant-based assistance that differ from the currently mandated program requirements of the 1937 Act and its implementing regulations. The Agency is authorized to adopt any reasonable policies to calculate the tenant portion of the rent that differ from the currently

mandated program requirements of the 1937 Act and its implementing regulations.” (MTW Agreement, p. 33 (Attachment C, p. 9)).

55. In adopting a payment standard that is woefully below fair market rents and results in the perpetuation of racial segregation and the concentration of poverty in certain areas of San Diego, SDHC failed to adopt a reasonable payment standard policy and breached this provision of the MTW Agreement.

56. In adopting a rent burden policy that allows Section 8 participants to pay up to 50 percent of their income towards rent, despite federal best practices identifying families that pay more than 30 percent of their income towards rent as rent burdened and in an unstable housing situation, SDHC failed to adopt a reasonable rent burden policy and breached this provision of the MTW Agreement.

Racial Discrimination and Segregation in SDHC’s Section 8 Program

57. SDHC’s 2018 Section 8 participants are 53.55 percent White and 46.44 percent racial minorities. The City of San Diego is 64.7 percent White and 35.3 percent racial minorities. Racial minorities are overrepresented among Section 8 participants in the City of San Diego.

58. SDHC knew its administration of the Section 8 program was perpetuating racial segregation and the concentration of poverty in the City of San Diego. SDHC stated in its 2016, 2017, and 2018 Annual Plans that it would focus on prioritizing poverty deconcentration and voucher utilization efforts. In its 2017 Annual Plan, SDHC states that providing households with the option to relocate to a “low-poverty area” “ensures better life outcomes due to increased neighborhood safety, lower crime rates, better health, and higher levels of life satisfaction.” In its 2018 Annual Plan, SDHC states that its programs includes strategies “enabling households to relocate from high- and medium-poverty neighborhoods to low-poverty neighborhoods in the City of San Diego” to “provide and enhance opportunities for low-income households to live in, and benefit from, areas of opportunity otherwise inaccessible for a majority of rental assistance participants.” It states that through its programs, SDHC ensures “HCV participants are

1 incentivized to relocate to low-poverty areas due to increased affordability, resulting in
2 decreased concentrations of poverty and positive outcomes for HCV households.”

3 59. The payment standard determines the areas within which Section 8 participants will be
4 able to afford rental units. The families participating in SDHC’s Section 8 program are not
5 legally restricted to units in any zip code. SDHC is required to administer the Section 8 program
6 for any eligible unit located by a SDHC Section 8 participant in the City of San Diego. But the
7 payment standards set by SDHC has an effect equivalent to a legal restriction. The majority of
8 SDHC Section 8 participants do not reside in and cannot access units in low-poverty, high-
9 opportunity, predominantly White zip codes.

10 60. HUD’s stated policy is that public housing authorities should set payment standards to
11 make 50 percent of the rental dwelling units in the area housing market available for Section 8
12 use. SDHC’s payment standards policy and decisions fail to make 50 percent of the rental
13 dwelling units in the city available, and instead make a disproportionate number of units
14 available in predominantly high-poverty, non-predominantly White areas of the city. SDHC’s
15 payment standards make a disproportionate number of units in predominantly low-poverty,
16 White areas unavailable. SDHC’s policy and decisions make a higher percentage of the rental
17 units in predominantly minority, high-poverty areas available for occupancy by persons assisted
18 under Section 8. The same payment standards make a lower percentage of the rental units in
19 low-poverty, predominantly White areas available for occupancy by persons assisted under
20 Section 8.

21 61. SDHC had many opportunities to revise its payment standards setting policy and
22 decisions to eliminate the disparities between the number and percent of units available in low-
23 poverty, predominantly White areas compared to the number and percent of units available in
24 high-poverty, minority areas. SDHC continuously chose not to make any revision, but continued
25 to set payment standards that render a disproportionate number of units in low-poverty,
26 predominantly White areas unavailable for use in the Section 8 program. SDHC chose to
27 continue to set payment standards that made a disproportionate number of units in minority areas
28 available for use in the Section 8 program.

62. SDHC has been given the opportunity to explain the racially discriminatory effects of its payment standard setting policy and decisions. When asked why SDHC had chosen not to increase its payment standards to reflect SAFMRs, SDHC’s Chief Executive Officer stated that the program: “*amounted to nothing more than social engineering*,” “would have been hard to administer, expensive to administer, prone to errors,” and a subset of participants would experience a decrease in assistance causing them to have to pay more in rent. (New plan could increase voucher value in higher-rent areas, San Diego Union-Tribune, Aug. 28, 2017; Voucher change gives greater mobility for low-income residents, San Diego Union-Tribune, Feb. 19, 2018.)

63. The use of payment standards that reflect market rents would not decrease the total number of Section 8 units available in the City of San Diego. When a Section 8 participant is seeking a dwelling unit, the participant must find a unit with rent that is at or below the payment standard. SDHC’s payment standards are below market rents. If SDHC increased payment standards to reflect market rents, there would be an increase in the number of Section 8 units available.

64. Effective August 2019, the City of San Diego will prohibit landlords in the City of San Diego from refusing to rent to Section 8 voucher holders. As a result, all rental units in the City of San Diego will be potentially accessible to Section 8 participants.

65. The use of payment standards that reflect market rents would not increase SDHC’s administrative costs for setting the payment standards. The data is already available from HUD, and updated data is established by HUD each year.

66. HUD made available a source of federal funding specifically for any one-time costs associated with the adoption of SAFMRs. (PIH-2018-09, 14.) SDHC did not apply for the funding.

67. The use of payment standards that reflect market rents would not dramatically increase the total amount of federal funds used for the Section 8 program in San Diego. Jurisdictions that have implemented payment standards based on SAFMRs have experienced small and gradual movement, rather than immediate movement.

68. In 2017, SDHC received \$162,981,499 in total voucher HAP (the contract between the private landlord and SDHC) funding, but expended only \$136,154,334 on HAP expenditures. Only 83.5 percent of SDHC's share of voucher HAP funding was spent directly on vouchers, resulting in additional funds in SDHC's reserves. SDHC can draw down some of its reserves to fund higher payment standards. HUD encourages housing authorities to increase their payment standards to decrease rent burdens and increase a program's success rate. The success rate is the share of households issued vouchers who are able to successfully find a private landlord to accept the voucher before the voucher expires. SDHC's success rate is 70 percent.

69. The use of payment standards that reflect market rents would not cause any Section 8 participants to experience a decrease in assistance, because SDHC has the discretion to hold harmless any tenant who would experience a decrease in payment standard. HUD granted housing authorities, including SDHC, the discretion to hold current tenants harmless from a rent increase that results from a change in the fair market rent during the term of the HAP contract. (HUD conformed the SAFMR regulations to Section 107 of the Housing Through Opportunity Modernization Act.) In fact, because SDHC's payment standards are so woefully below market rents, if SDHC increased the payment standards to reflect market rents, payment standards would increase for 99 percent of Section 8 participants. If SDHC chose not to implement a hold harmless policy, the payment standard for one bedroom units in one of the City's 33 zip codes would decrease from \$1,117 to \$1,090. This could cause a rent increase of up to \$27 for up to 172 voucher recipients at the time of their next biannual recertification if no other changes occurred. The remaining 15,093 voucher recipients would see a dramatic increase in assistance if payment standards were increased to reflect market rents. SDHC can, however, hold the 172 tenants harmless from such increases as authorized under federal law.

70. SDHC knew that its payment standard setting policies and practices disproportionately harmed and continue to harm minorities. SDHC's own data shows that minorities are overrepresented among Section 8 participants, that the majority of Section 8 participants reside in high-poverty, racially segregated neighborhoods, and that SDHC's payment standards render units in low-poverty, predominantly White neighborhoods inaccessible to Section 8 participants.

71. In 2016, SDHC knew that it was targeted by HUD for SAFMR implementation because of the concentration of poverty and racial segregation in its Section 8 program. SDHC knew HUD had directed SDHC to update its payment standards for each zip code to reflect fair market rents in an effort to deconcentrate poverty and address racial segregation in the Section 8 program. SDHC refused to update its payment standards for each zip code to reflect fair market rents and instead selectively adjusted its payment standards in a way that furthered, rather than ameliorated, the concentration of poverty and racial segregation. SDHC increased the payment standards for certain zip codes in high-poverty, racially segregated areas in a way that caused the payment standards to more closely reflect fair market rents, but increased the payment standards for low-poverty, predominantly White areas in a way that caused the payment standards to remain significantly below fair market rents. As a result, the payment standards in high-poverty, racially concentrated areas more closely reflect fair market rents, while the payment standards in low-poverty, predominantly White areas do not. When asked why SDHC had chosen not to increase its payment standards to reflect SAFMRs, SDHC's Chief Executive Officer stated that the SAFMR program: "*amounted to nothing more than social engineering.*" SDHC has tracked the effectiveness of its payment standards at deconcentrating poverty and addressing racial segregation, and has been aware that its payment standards further, rather than ameliorate, racial segregation.

72. SDHC requires families that move to the low-poverty, predominantly White areas to pay a higher percentage (50 percent) of their income towards rent. SDHC did not increase the rent burden for the high-poverty, racially segregated areas. SDHC knew that increasing the rent burden for the low-poverty, predominantly White areas would effectively deter families from moving to these areas. SDHC has tracked the effectiveness of its payment standards and rent burden policy at deconcentrating poverty and addressing racial segregation, and has been aware that the policies further racial segregation.

73. SDHC's payment standards policy and decisions are intended to and do exacerbate racial segregation in the City of San Diego. SDHC's use of payment standards that are woefully below market rents is done with a racially discriminatory purpose. There are rental units in low-poverty,

high-opportunity, predominantly White areas that are standard quality, non-luxury housing suitable for occupancy by persons under Section 8. SDHC's actions setting below-market payment standards and increasing the rent burden for these areas makes many of these dwellings in the low-poverty, high-opportunity, predominantly White areas unavailable to SDHC Section 8 participants.

74. There is no legitimate, bona fide, good faith governmental justification for the use of payment standards that are woefully below market rents for the Section 8 program in San Diego.

75. SDHC's calculation of payment standards using below market rate rents perpetuates racial segregation in the City of San Diego. SDHC's payment standards prevent minority SDHC Section 8 participants from accessing the higher rent, lower poverty, predominantly White zip codes of San Diego. These areas have newer housing, superior public and private services, better performing schools, less exposure to adverse environmental conditions and industrial nuisance conditions, and lower probabilities of exposure to criminal victimization.

76. In the predominantly White, low-poverty neighborhoods, SDHC has set the payment standard below the median rent and fair market rent, excluding families with vouchers—disproportionately racial minorities—from accessing available rental units.

77. For example, the Point Loma neighborhood is 74.4 percent White (Not Hispanic or Latino), 7.1 percent of the residents are below the Poverty Level, and the percentage of voucher holders residing in this neighborhood is one percent of all renters (30 voucher holders out of 2,350 renters). SDHC has set the payment standard for 2019 at \$1,810 for a two bedroom unit, which is \$610 below the fair market rent for a two bedroom unit, \$2,420. It is also below the 2017 Median Rent for a two bedroom unit (\$1,849) which has significantly increased since 2017.

78. Similar to the Point Loma neighborhood, the La Jolla neighborhood is 76.4 percent White (Not Hispanic or Latino), 10.5 percent of the residents are below the Poverty Level, and the percentage of voucher holders residing in this neighborhood is one tenth of a percent of all renters (6 voucher holders 5,785 renters). SDCH has set the payment standard for 2019 at \$1,810 for a two bedroom unit, which is \$500 below the below the fair market rent for a two bedroom

unit, \$2,310. It is also below the 2017 Median Rent (\$1,916) for a two bedroom unit, which has significantly increased since 2017.

79. The East San Diego/City Heights neighborhood is 16 percent White (Not Hispanic or Latino), 27.6 percent of the residents are below the Poverty Level, and the percentage of voucher holders residing in this neighborhood is 19 percent of all renters (2,452 voucher holders of the 13,120 renters). SDHC has set the payment standard for 2019 at \$1,356 for a two bedroom unit, which is \$114 below the fair market rent for a two bedroom unit, \$1,470.

80. Similar to the East San Diego/City Heights neighborhood, the Logan Heights neighborhood is 9 percent White (Not Hispanic or Latino), 34.5 percent of the residents are below the Poverty Level, and the percentage of voucher holders residing in this neighborhood is 16 percent of all renters (951 voucher holders of the 5851 renters). SDHC has set the payment standard for 2019 at \$1,356 for a two bedroom unit, which is \$64 below the fair market rent for a two bedroom unit, \$1,420.

Zip Code ²	Neighborhood ³	Fair Market Rent (2 Bedroom) ⁴	Voucher Amount (2 Bedroom) ⁵	% White (Not Hispanic or Latino) ⁶	% Below Poverty Level ⁷	Vouchers as % of All Renters ⁸
92106	Point Loma	\$2,420	\$1,810	74.4%	7.1%	1% (30/2350)
92037	La Jolla	\$2,310	\$1,810	76.4%	10.5%	0.1% (6/5785)
92105	East San Diego/City Heights	\$1,470	\$1,356	16%	27.6%	19% (2452/13120)
92113	Logan Heights	\$1,420	\$1,356	9.3%	34.5%	16% (951/5851)

² SDHC 2019 Payment Standards.

³ SDHC 2019 Payment Standards.

⁴ HUD SAFMRs 2019.

⁵ SDHC 2019 Payment Standards.

⁶ ACS 2017 5-Year Survey (2013-2017).

⁷ ACS 2017 5-Year Survey (2013-2017).

⁸ SDHC 2018 Voucher Data; SDHC 2019 Payment Standards; HUD 2019 Zip Code Tabulation Area (ZCTA) Distribution Data (Effective 2018).

1 81. If SDHC were to increase the payment standard to align with fair market rents, families
2 with vouchers—disproportionately racial minorities—would be able to access rental units in
3 low-poverty, predominantly White neighborhoods.

4 82. SDHC’s payment standards use the existence of the racially separate rental housing
5 markets to perpetuate racial segregation. In these segregated markets, standard quality, non-
6 luxury housing in predominantly White areas cost more than standard quality, non-luxury rental
7 housing in predominantly minority areas. SDHC sets the payment standards significantly below
8 the median rent for standard quality, non-luxury rental housing in predominantly White areas.

9 83. The smaller number of units in predominantly White market areas resulting from
10 SDHC’s payment standard policies and rent setting steers minority SDHC Section 8 participants
11 away from units in White areas because of the likelihood that that they will have to spend more
12 resources, time, and money looking for and finding rental housing in those areas, the housing
13 will cost more requiring them to pay a premium to live in those areas, they may not find and
14 secure housing in those areas within the limited time available to utilize the voucher,⁹ and they
15 will be required to pay a higher percentage (50 percent) of their income towards rent to live in
16 those areas due to SDHC’s policies.

17 84. SDHC’s payment standards make more units available in high poverty, racially
18 segregated market areas. The larger number of units in minority areas encourages racial
19 segregation by steering minority Section 8 participants to find rental housing in the minority
20 market areas or to remaining in minority market areas. SDHC Section 8 participants are steered
21 into minority areas by the higher probability of finding a unit at an affordable rate, and their need
22 to spend less than the percentage encouraged in low-poverty areas towards rent.

23 85. The discriminatory effects of SDHC’s payment standard setting policy and decisions can
24 be avoided by using less discriminatory alternatives that would accomplish the legitimate
25 interests of a payment standard setting policy.

26
27 ⁹ Within 60 calendar of being issued a voucher, a family must find a rental unit, enter into a lease, and submit the
28 lease and a Request for Tenancy Approval to SDHC. If the voucher expires before the family enters into a lease, the
family is denied assistance and must re-apply to the SDHC waitlist. It takes 10 years to get a voucher from the
SDHC waitlist.

1 86. As specified above, SDHC's payment standards policy and decisions have a
2 disproportionate and discriminatory effect on the minority SDHC Section 8 participant
3 population. These effects and the use of below-market payment standards are not necessary
4 elements of a legitimate payment standard policy.

5 87. Possibilities for setting payment standards that will not have a disproportionate and
6 discriminatory effect on SDHC Section 8 participants include: (a) setting payment standards that
7 reflect 100 percent of HUD's 2019 SAFMRs, and (b) setting payment standards pursuant to a
8 three-tier program that is based on an average of HUD's 2019 SAFMRs for the zip codes within
9 each tier. Both of these alternatives achieves the legitimate objectives of a payment setting policy
10 without increasing SDHC's administrative costs for the setting of payment standards. The
11 SAFMR data is already available from HUD, and will be updated each year.

12 88. A similar standard to one of the above alternative payment standard setting policies
13 would provide SDHC's Section 8 participants with desegregated and non-discriminatory access
14 to all areas in San Diego.

15 89. The use of payment standards that reflect market rents would also increase the utilization
16 rate for SDHC, an objective all public housing authorities, including MTW-designated
17 authorities, must work towards.

18 90. The non-discriminatory alternatives using payment standards that reflect HUD's
19 SAFMRs, or an average of SAFMRs for a three-tier program, achieves the legitimate objectives
20 of a Fair Market Rent policy without increasing SDHC's administrative costs for setting of
21 payment standards. The SAFMR data is already available from HUD, and will be updated each
22 year.

23 91. SDHC's payment setting decision making record contains no facts to show that SDHC
24 examined and addressed the effects of its decisions in light of its obligations to affirmatively
25 further fair housing and to avoid racial discrimination.

26 92. SDHC's public administrative record for its payment standard setting process shows that
27 SDHC did nothing to address the effects of its use of below market rate payment standards on
28 the racial composition of the areas covered by the payment standards or on the housing choices

1 of Section 8 participants. That record shows SDHC did nothing to address the effects of its
2 payment standards policy and decisions on the availability of dwelling in predominantly White
3 areas for SDHC Section 8 participants, did not address the effect of its actions on fair housing
4 opportunities in the San Diego area, and did not use its payment standard setting policies and
5 decisions to further fair housing opportunities for SDHC’s Section 8 participants in the City of
6 San Diego.

7
8 **FIRST CAUSE OF ACTION**
9 **Violation of California Fair Employment and Housing Act (FEHA)**
10 **Gov. Code § 12900 *et seq.***

11 93. Plaintiffs incorporate all previous paragraphs as if fully set forth herein.

12 94. California Fair Employment and Housing Act (FEHA) prohibits housing
13 discrimination based on race, religious creed, color, national origin, ancestry, physical disability,
14 mental disability, medical condition, genetic information, marital status, sex, gender, gender
15 identity, gender expression, age, or sexual orientation. Gov. Code §§ 12920, 12955.

16 95. Gov. Code § 12955.8(b) authorizes a claim for housing discrimination irrespective
17 of intent, when the alleged act or omission has the effect of discriminating on the basis of race,
18 color, national origin, or ancestry.

19 96. Discrimination includes “the provision of segregated or separated housing
20 accommodation.” Gov. Code § 12927(c)(1).

21 97. SDHC is engaged in the business of owning, leasing, and managing more than
22 3,500 rental housing units, and administering the Section 8 program.

23 98. SDHC has a mandatory legal duty to comply with FEHA. By setting and
24 enforcing payment standards in a way that restricts housing opportunities and perpetuates
25 discrimination in the form of racial segregation, SDHC has failed and refused to carry out that
26 duty.

27 99. SDHC’s actions in setting and enforcing payment standards below fair market
28 rent harms Plaintiffs and families with vouchers—disproportionately racial minorities—by

1 excluding them from accessing available rental units in predominantly White, low-poverty
2 neighborhoods, and restricting them to rental units in high-poverty, racially segregated
3 neighborhoods. SDHC's actions are discriminatory and perpetuate racial segregation in the City
4 of San Diego in violation of FEHA.

5 100. SDHC's payment standard setting policies and practices disproportionately harm
6 racial minorities because in San Diego, racial minorities are overrepresented among Section 8
7 participants.

8 101. Plaintiffs are directly and beneficially interested in SDHC's compliance with all
9 applicable provisions of the law and with all legal duties, as set forth herein.

10 102. At all times relevant to this action, SDHC has had the ability to comply with
11 FEHA and has failed to do so.

12 103. Unless compelled by this Court to comply with FEHA and to refrain from setting
13 payment standards in a way that perpetuates racial segregation in the City of San Diego, SDHC
14 will continue to refuse to comply with FEHA and will continue to violate FEHA. Plaintiffs and
15 other Section 8 participants will continue to be injured as a result.

16 104. SDHC's actions discriminate against Plaintiffs in violation of Gov. Code § 12900
17 *et seq.*

18 105. Plaintiffs have no plain, speedy, or adequate remedy at law other than the relief
19 requested in this Complaint for Declaratory and Injunctive Relief.

20 106. Plaintiffs are entitled to declaratory and injunctive relief as set forth below.

21
22 **SECOND CAUSE OF ACTION**
23 **Violation of Unruh Civil Rights Act**
24 **Civ. Code §§ 51 *et seq.***

25 107. Plaintiffs incorporate all previous paragraphs as if fully set forth herein.

26 108. The Unruh Civil Rights Act provides that all persons in California, no matter what
27 their sex, race, color, religion, ancestry, national origin, disability, medical condition, genetic
28 information, marital status, sexual orientation, citizenship, primary language, or immigration
status, are entitled to the full and equal accommodations, advantages, facilities, privileges, or

1 services in all business establishments of every kind whatsoever. Civ. Code §§ 51(b), 51.5. The
2 Unruh Civil Rights Act prohibits discrimination in the business of renting housing
3 accommodations. *Id.*

4 109. SDHC is engaged in the business of owning, leasing, and managing more than
5 3,500 rental housing units, and administering the Section 8 program. SDHC has a mandatory
6 duty to comply with the Unruh Civil Rights Act.

7 110. Neither SDHC nor its agents may enforce policies which directly or indirectly
8 abridge the rights afforded to individuals by section 51 of the Unruh Civil Rights Act. These
9 rights include the right to be free from discrimination based on race in securing housing.

10 111. SDHC's payment standards policy and decisions are intended to and do
11 exacerbate racial segregation in the City of San Diego. SDHC's use of payment standards that
12 are woefully below market rents is done with a racially discriminatory purpose. There are rental
13 units in low-poverty, high-opportunity, predominantly White areas that are standard quality, non-
14 luxury housing suitable for occupancy by persons under Section 8. SDHC's actions setting
15 below-market payment standards makes many of these dwellings in the low-poverty, high-
16 opportunity, predominantly White areas unavailable to SDHC Section 8 participants.

17 112. SDHC knew its payment standards policy and its enforcement of its policy
18 perpetuated racial segregation in the City of San Diego. SDHC had many opportunities to revise
19 its payment standards setting policy and decisions to eliminate the disparities between the
20 number and percent of units available in low-poverty, predominantly White areas compared to
21 the number and percent of units available in high-poverty, minority areas. SDHC continuously
22 chose not to make any revision, but continued to set payment standards that render a
23 disproportionate number of units in low-poverty, predominantly White areas unavailable for use
24 in the Section 8 program. SDHC chose to continue to set payment standards that made a
25 disproportionate number of units in minority areas available for use in the Section 8 program.

26 113. SDHC knew that its payment standard setting policies and practices
27 disproportionately harm minorities. SDHC's data shows that minorities are overrepresented
28 among Section 8 participants.

1 114. SDHC intentionally set payment standards woefully below fair market rents to
2 disproportionately impact minority SDHC Section 8 participants, preclude them from using their
3 Section 8 vouchers in low-poverty and predominantly White areas, and restrict their use of the
4 voucher to high-poverty, non-predominantly White areas.

5 115. SDHC knowingly set payment standards and enforced payment standard policies
6 in a way that perpetuated racial segregation and the concentration of poverty in the Section 8
7 program in the San Diego area.

8 116. Because SDHC's payment standards sets forth a policy that prevents minority
9 SDHC Section 8 program participants from enjoying the full and equal advantages of renting
10 units in the City of San Diego, including predominantly White areas and areas outside of those
11 with concentrated poverty, it violates the Unruh Civil Rights Act's prohibition against racial
12 discrimination.

13 117. SDHC has a mandatory duty to comply with the Unruh Civil Rights Act. By
14 setting payment standards in a way that perpetuates racial segregation, SDHC has failed and
15 refused to carry out that duty.

16 118. Plaintiffs are directly and beneficially interested in SDHC's compliance with all
17 applicable provisions of the law and with all legal duties, as set forth herein.

18 119. At all times relevant to this action, SDHC has had the ability to comply with the
19 Unruh Civil Rights Act and has failed to do so.

20 120. Unless compelled by this Court to comply with the Unruh Civil Rights Act and to
21 refrain from setting payment standards in a way that perpetuates racial segregation in the City of
22 San Diego, SDHC will continue to refuse to comply with the Unruh Civil Rights Act and will
23 continue to violate the law. Plaintiffs and other Section 8 participants will continue to be injured
24 as a result.

25 121. SDHC's actions discriminate against Plaintiffs in violation of Civ. Code §§ 51 *et*
26 *seq.*

27 122. Plaintiffs have no plain, speedy, or adequate remedy at law other than the relief
28 requested in this Complaint for Declaratory and Injunctive Relief.

1 123. Plaintiffs are entitled to declaratory and injunctive relief as set forth below.

2 **THIRD CAUSE OF ACTION**

3 **Breach of Written Contract—By Third-Party Beneficiary**

4 **Civ. Code § 1559**

5 124. Plaintiffs incorporate all previous paragraphs as if fully set forth herein.

6 125. On January 14, 2009, HUD and SDHC entered into a written contract, entitled
7 Amended and Restated Moving to Work Agreement (hereinafter “the MTW Agreement”), a
8 copy of which is attached as Exhibit A, and made a part of this pleading. The contract specified
9 that its term would continue until the end of SDHC’s 2018 fiscal year, unless such term was
10 otherwise extended by HUD. On or around April 14, 2016, HUD extended the term of the
11 contract through 2028, a copy of the extension is attached as Exhibit B, and made a part of this
12 pleading.

13 126. By the terms of the contract, SDHC agreed to comply with federal fair housing
14 laws and regulations.

15 127. As third-party beneficiaries to the contract, Plaintiffs have the right to enforce the
16 contract and can bring an action to compel specific performance. Civ. Code § 1559.

17 128. On or about December 2018, SDHC breached the contract by failing to comply
18 with fair housing laws and regulations. SDHC failed to comply with fair housing laws and
19 regulations by setting and implementing payment standards in a way that perpetuates racial
20 segregation and the concentration of poverty in the City of San Diego; failing to examine and
21 address the effects of its payment setting policies and decisions on the racial composition of the
22 areas affected and on the integrated housing choices available to SDHC Section 8 program
23 participants; and failing to adopt a reasonable rent burden policy by encouraging participants to
24 pay 50 percent of their income towards rent.

25 129. As a result of SDHC’s breach of the contract, Plaintiffs have been precluded from
26 using their Section 8 vouchers in low-poverty and predominantly White areas, and their use of
27 the voucher has been restricted to high-poverty, racially segregated areas.
28

FOURTH CAUSE OF ACTION
Discrimination in State-Funded Programs
Gov. Code §§ 11135, 11139

130. Plaintiffs incorporate all previous paragraphs as if fully set forth herein.

131. Pursuant to Gov. Code § 11135, “No person in the State of California shall, on the basis of sex, race, color, religion, ancestry, national origin, ethnic group identification, age, mental disability, physical disability, medical condition, genetic information, marital status, or sexual orientation, be unlawfully denied full and equal access to the benefits of, or be unlawfully subjected to discrimination under, any program or activity that is conducted, operated, or administered by the state or by any state agency, is funded directly by the state, or receives any financial assistance from the state.”

132. SDHC is engaged in the business of owning, leasing, and managing more than 3,500 rental housing units, and administering the Section 8 program and public housing.

133. SDHC receives funding from the State of California.

134. In setting paying standards below market rents and implementing those payment standards, SDHC administered and continues to administer its Section 8 program in a manner that had the purpose and effect of unlawfully denying Plaintiffs access to units in low-poverty, predominantly White areas in violation of Gov. Code § 11135(a) and its implementing regulations.

135. In setting paying standards below market rents, SDHC administered and continues to administer its Section 8 program in a manner that had the purpose and effect of subjecting Plaintiffs to discrimination in the form of racial segregation in violation of Gov. Code § 11135(a) and its implementing regulations.

136. SDHC has a mandatory duty to comply with Gov. Code § 11135. By setting payment standards in a way that perpetuates racial segregation, SDHC has failed and refused to carry out that duty. SDHC’s actions violate Gov. Code § 11135.

137. Plaintiffs are directly and beneficially interested in SDHC’s compliance with all applicable provisions of the law and with all legal duties, as set forth herein.

1 138. At all times relevant to this action, SDHC has had the ability to comply with Gov.
2 Code § 11135 and has failed to do so.

3 139. Unless compelled by this Court to comply with Gov. Code § 11135 and to refrain
4 from setting payment standards in a way that perpetuates racial segregation in the City of San
5 Diego, SDHC will continue to refuse to comply with Gov. Code § 11135 and will continue to
6 violate the law. Plaintiffs and other Section 8 participants will continue to be injured as a result.

7 140. SDHC's actions discriminate against Plaintiffs in violation of Civ. Code § 11135
8 *et seq.*

9 141. Plaintiffs have no plain, speedy, or adequate remedy at law other than the relief
10 requested in this Complaint for Declaratory and Injunctive Relief.

11 142. Plaintiffs are entitled to declaratory and injunctive relief as set forth below.

12
13 **FIFTH CAUSE OF ACTION**
14 **Declaratory and Injunctive Relief**
 Code of Civ. Proc. §§ 526 and 1060

15 143. Plaintiffs incorporate all previous paragraphs as if fully set forth herein.

16 144. SDHC Section 8 participants are suffering irreparable injury as a result of
17 SDHC's actions in setting payment standards. The injuries suffered are not easily quantified or
18 compensable, and no compensation or other legal remedy could make whole Section 8
19 participants who have been unable to secure and maintain housing in low-poverty and
20 predominantly White areas due to SDHC's actions. SDHC, unless enjoined, will continue to
21 issue Section 8 vouchers based on payment standards that are woefully below fair market rents,
22 resulting in the perpetuation of racial segregation and the concentration of poverty in the City of
23 San Diego.

24 145. SDHC Section 8 participants have suffered and will continue to suffer from a lack
25 of access to low-poverty and predominantly White areas, which they cannot access as a direct
26 and proximate result of SDHC's actions in setting and implementing payment standards woefully
27 below fair market rents.
28

1 146. Unless enjoined by this Court, SDHC will continue to set payment standards in a
2 way that disproportionately impacts minority SDHC Section 8 participants, precluding them
3 from using their Section 8 voucher in low-poverty and predominantly White areas.

4 147. Plaintiffs are entitled to a legal declaration of their rights and SDHC's obligations
5 under applicable state law as alleged in this petition and complaint.

6 148. Plaintiffs are entitled to injunctive relief requiring SDHC to comply with its legal
7 duties as alleged in this complaint.

8 149. Plaintiffs are directly and beneficially interested in SDHC's compliance with all
9 applicable provisions of the law and with all legal duties, as set forth herein. As a result, they
10 have standing to bring this claim for declaratory and injunctive relief.

11 150. At all times relevant to this action, SDHC has had the ability to comply with state
12 fair housing and anti-discrimination laws, and contractual obligations to comply with federal fair
13 housing and anti-discrimination laws, and has failed to do so.

14 151. Unless compelled by this Court to comply with those laws and contractual
15 obligations, SDHC will continue to refuse to comply and will continue to violate the law.
16 Plaintiffs and Section 8 participants will continue to be injured as a result.

17
18 **SIXTH CAUSE OF ACTION**
19 **Writ of Ordinary Mandate**
 Code of Civ. Proc. § 1085

20 152. Plaintiffs incorporate all previous paragraphs as if fully set forth herein.

21 153. Plaintiffs are beneficially interested parties entitled to a peremptory writ to
22 "compel the performance of an act which the law specifically enjoins." Code of Civ. Proc. §
23 1085.

24 154. Under state law, SDHC has a mandatory legal duty to comply with the California
25 Fair Employment and Housing Act (FEHA) (Code § 12900 *et seq.*), the Unruh Civil Rights Act
26 (Civ. Code §§ 51 *et seq.*), and Gov. Code § 11135 which prohibits discrimination in state-funded
27 programs.
28

1 155. At all times relevant to this action, SDHC has had the ability to comply with these
2 laws and has failed to do so.

3 156. By setting payment standards in a way that subjects voucher recipients to racial
4 discrimination and perpetuates racial segregation in the City of San Diego, SDHC is failing, as
5 set forth herein, to comply with their mandatory legal duties:

6 a. Under Gov. Code § 12900 *et seq.*, to not discriminate on the basis of race,
7 color, or national origin in housing, to not restrict housing opportunities on
8 the basis of race, color, or national origin, and to not perpetuate
9 discrimination in the form of racial segregation;

10 b. Under Civ. Code §§ 51 *et seq.*, to not discriminate on the basis of race,
11 color, or national origin in housing, and to not perpetuate racial
12 segregation; and

13 c. Under Gov. Code. § 11135, to not discriminate on the basis of race, color,
14 or national origin in state-funded programs.

15 157. SDHC has a mandatory duty to comply with these laws.

16 158. SDHC does not have the legal discretion to set payment standards in a way that
17 violates these laws.

18 159. Plaintiffs are directly and beneficially interested in SDHC's compliance with all
19 applicable provisions of the law and with all legal duties, as set forth herein. They have standing
20 to bring this claim for writ of mandate, both as a result of their beneficial interest and in the
21 public interest, as set forth therein

22 160. Unless compelled by this Court to comply with these laws and to refrain from
23 setting payment standards in a way that discriminates and perpetuates racial segregation, SDHC
24 will continue to refuse to comply with these laws and will continue to violate the law. Plaintiffs
25 and other Section 8 participants will continue to be injured as a result.

26 161. Plaintiffs lack a plain, speedy, and adequate remedy at law except by way of
27 peremptory writ of mandate pursuant to Civ. Code of Proc. § 1085.
28

1 162. Plaintiffs pray for a writ of mandate and for declaratory and injunctive relief, as
2 set forth below.

3 **PRAYER FOR RELIEF**

4 **WHEREFORE** Plaintiffs pray for entry of judgment as follows:

5 1. For a declaration that:

6 a. SDHC's payment standard setting policies and practices have perpetuated racial
7 segregation and the concentration of poverty in the City of San Diego,

8 b. SDHC has administered the Section 8 program in a discriminatory fashion in
9 violation of state law, federal law, and its contractual obligations,

10 i. SDHC has breached its MTW contract with HUD by failing to comply
11 with federal fair housing laws and regulations,

12 ii. By setting payment standards in a way that subjects voucher recipients to
13 racial discrimination and perpetuates racial segregation, SDHC has failed to comply with its
14 mandatory legal duties set forth in Gov. Code §§ 12900 *et seq.*,

15 iii. By setting payment standards in a way that subjects voucher recipients to
16 racial discrimination and perpetuates racial segregation, SDHC has failed to comply with its
17 mandatory legal duties set forth in Civ. Code §§ 51 *et seq.*, and

18 iv. By unlawfully denying Plaintiffs access to units in low-poverty,
19 predominantly White areas, and subjecting Plaintiffs to discrimination in the form of racial
20 segregation, SDHC has failed to comply with its mandatory legal duties set forth in Gov. Code
21 § 11135(a) and its implementing regulations.

22 2. For a peremptory writ of mandate and injunctive relief commanding SDHC to:

23 a. Immediately adopt a non-discriminatory payment standards policy that does not
24 perpetuate segregation in the City of San Diego,

25 b. Comply with federal fair housing laws and regulations pursuant to its MTW
26 contract,

27 c. Comply with the California Fair Employment and Housing Act's prohibition on
28 discrimination (Gov. Code §§ 12900 *et seq.*),

1 d. Comply with the Unruh Civil Rights Act's prohibition on discrimination (Civ.
2 Code §§ 51 *et seq.*), and

3 e. Comply with California's prohibition on discrimination in state-funded programs
4 (Gov. Code § 11135).

5 3. For reasonable attorney's fees and costs pursuant to, *inter alia*, Code of Civil Procedure §
6 1021.5 and Civ. Code § 52;

7 4. For such other and further relief as the Court deems just and proper.

8
9 Dated: March 7, 2019

By:



PARISA IJADI-MAGHSOODI
Attorney for Plaintiffs/Petitioners

VERIFICATION

I, Catherine Mendonca, am an agent of San Diego Tenant Union, one of the Petitioners and Plaintiffs in the above action. I am authorized to make this verification on behalf of San Diego Tenant Union. I have read the foregoing petition for writ of mandate and complaint for declaratory and injunctive relief. To the extent that the Petition is based upon facts that are known to me, I verify that they are true, and otherwise, I am informed and believed that all facts herein are true.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed this 4th day of March, 2019, in San Diego, California.


CATHERINE MENDONCA

VERIFICATION

I, Darlisa McDowell, am one of the Petitioners and Plaintiffs in the above action. I have read the foregoing petition for writ of mandate and complaint for declaratory and injunctive relief. To the extent that the Petition is based upon facts that are known to me, I verify that they are true, and otherwise, I am informed and believed that all facts herein are true.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed this 3rd day of March, 2019, in San Diego, California.

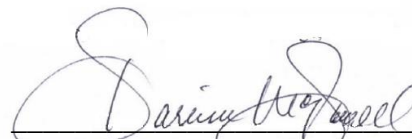

DARLISA MCDOWELL

Exhibit A

Amended and Restated Moving to Work Agreement

This Amended and Restated Moving to Work Demonstration Agreement (Restated Agreement) is entered into on this 14th day of January, 2009 by and between the United States of America through the U.S. Department of Housing and Urban Development (HUD) and the **San Diego Housing Commission** (Agency). The term of this Agreement shall begin on the Date of Execution by HUD and shall continue until the end of the Agency's 2018 Fiscal Year, subject to meeting the evaluation criteria described in Section IV, unless such term is otherwise extended by HUD; and

WHEREAS, Section 204 of the Omnibus Consolidated Rescissions and Appropriations Act of 1996 (Pub. L. 104-134) (1996 Appropriations Act) establishes the statutory framework known as the Public Housing/Section 8 Moving to Work (MTW) demonstration program; and

WHEREAS, Section 204(a) of the 1996 Appropriations Act provides that public housing agencies that administer Section 8 and public housing (Agencies) and the Secretary of HUD (Secretary) shall have the flexibility to design and test various approaches for providing and administering housing assistance that: 1) reduce cost and achieve greater cost effectiveness in Federal expenditures; 2) give incentives to families with children whose heads of household are either working, seeking work, or are participating in job training, educational or other programs that assist in obtaining employment and becoming economically self-sufficient; and 3) increase housing choices for low-income families (the three statutory objectives); and

WHEREAS, pursuant to Section 204(a) of the 1996 Appropriations Act, HUD may permit Agencies to combine funds appropriated under sections 8 and 9 of the 1937 Act, and may exempt Agencies from provisions of the 1937 Act and implementing regulations thereunder pertaining to Public and Indian Housing and section 8 voucher assistance; and

WHEREAS, the Secretary determined that the Agency satisfies the Secretary's selection criteria and selected the Agency to participate in MTW; and

WHEREAS, on the 8th day of December, 1998, HUD and the Agency executed an MTW Agreement (the Original MTW Agreement) governing the terms and conditions under which HUD authorizes the Agency to participate in MTW; and

WHEREAS, the parties have previously entered into one or more Annual Contributions Contracts (ACCs) setting forth the terms and conditions under which the Agency participates in the public housing and/or Section 8 Housing Choice Voucher programs administered by HUD; and

WHEREAS, the parties agree to execute this Restated Agreement, which hereby amends and replaces any Original MTW Agreement between HUD and the Agency; and

WHEREAS, it is a goal of the MTW demonstration to design and test innovative methods of providing housing and delivering services to low-income families in an efficient and cost effective manner, and HUD and the Agency agree to fully cooperate with each other in order to make the demonstration a success;

NOW, THEREFORE, in reliance upon and in consideration of the mutual representations and obligations hereunder, the parties do agree as follows:

I. Statutory Authorizations

- A. This Restated Agreement amends and replaces the Original MTW Agreement between HUD and the Agency. This Restated Agreement waives certain provisions of the United States Housing Act of 1937, as amended (1937 Act), and HUD's implementing requirements and regulations thereunder, as are set forth in the Statement of Authorizations (Attachment C), and the Legacy and Community-Specific Authorizations (Attachment D) only to the extent they are necessary to implement the Agency's Annual MTW Plan. Except as noted in Section I.B. below, this Restated Agreement supersedes the terms and conditions of one or more ACCs between the Agency and HUD, to the extent necessary for the Agency to implement its MTW demonstration initiatives as laid out in the Agency's Annual MTW Plan, as approved by HUD.
- B. Notwithstanding the preceding authority waiving certain provisions of the 1937 Act as necessary to implement the Agency's Annual MTW Plan, the following provisions of the 1937 Act, as otherwise applicable, shall continue to apply to the Agency and/or assistance received pursuant to the 1937 Act:
 - 1. The terms "low-income families" and "very low-income families" shall continue to be defined by reference to Section 3(b)(2) of the 1937 Act (42 U.S.C. § 1437a(b)(2));
 - 2. Section 12 of the 1937 Act (42 U.S.C. § 1437j), as amended, shall apply to housing assisted under the demonstration, other than housing assisted solely due to occupancy by families receiving tenant-based assistance; and
 - 3. Section 18 of the 1937 Act (42 U.S.C. § 1437p, as amended by Section 1002(d) of Public Law 104-19, Section 201(b)(1) of Public Law 104-134, and Section 201(b) of Public Law 104-202), governing demolition and disposition, shall continue to apply to public housing notwithstanding any use of the housing under MTW.
- C. This Restated Agreement only waives certain provisions of the 1937 Act and its implementing regulations. Other federal, state and local requirements applicable to public housing shall continue to apply notwithstanding any term contained in this Restated Agreement or any Authorization granted thereunder. Accordingly, if any requirement applicable to public housing, outside of the 1937 Act, contains a provision that conflicts or is inconsistent with any authorization granted in this Restated Agreement, the MTW Agency remains subject to the terms of that requirement. Such requirements include, but are not limited to, the following: Appropriations Acts,

competitive HUD notices of funding availability under which the Agency has received an award, state and local laws, Federal statutes other than the 1937 Act, and OMB Circulars and requirements (including regulations promulgated by HUD thereunder in 24 C.F.R. part 85).

- D. The MTW Agency is authorized to conduct activities in accordance with the Statement of Authorizations (Attachment C) and in accordance with the Legacy and Community-Specific Authorizations (Attachment D), as applicable. In the event of a conflict between Attachment C and Attachment D, the authorizations in Attachment D will supersede those in Attachment C.
- E. Notwithstanding any provision set forth in this Restated Agreement, including without limitations, the term of years and all extensions, renewals and options, and the terms set forth herein otherwise, any federal law that amends, modifies, or changes the aforementioned term of years and/or other terms of this Restated Agreement shall supersede this Restated Agreement such that the provisions of the law shall apply as set forth in the law.

II. Requirements and Covenants

- A. The amount of assistance received under sections 8 or 9 of the 1937 Act by an Agency participating in the demonstration shall not be diminished by the Agency's participation in the MTW demonstration.
- B. The Agency agrees that any HUD assistance that the Agency is authorized to use under the MTW demonstration shall be used in accordance with the Agency's Annual MTW Plans, as may be applicable. The Agency hereby certifies that the Agency's governing board has approved this Restated Agreement, and each Annual MTW Plan issued prior to the date hereof, as applicable, and that a copy of each such board approval has been provided to HUD.
- C. The Agency shall hold at least one public hearing per Annual MTW submission, and make the Annual MTW Plan available for public comment for at least thirty (30) days. The Agency agrees to take into account public comments on the program design, including comments from current tenants/participants, to the extent such comments were provided.
- D. The Agency shall: (i) ensure that at least 75 percent of the families assisted are very low-income families, as defined in section 3(b)(2) of the 1937 Act, (ii) assist substantially the same total number of eligible low-income families under MTW, as would have been served absent the demonstration, and (iii) maintain a comparable mix of families by family size, as would have been served or assisted had the amounts not been used under the demonstration.
- E. When providing public housing, the Agency will ensure that it is safe, decent, sanitary, and in good repair, according to an inspection protocol established or approved by the Secretary. This in no way precludes the Agency from modifying its own inspection

protocol as authorized in Attachments C and/or D as long as such protocol meets the housing quality standards established or approved by the Secretary.¹

- F. The Agency agrees to keep project level budgeting and accounting, report financial statements in the Financial Data Schedule (FDS)², and abide by project level management reviews and fees. The Agency will conform to OMB Circular A-87 and the HUD definition of reasonable fees as defined in 24 CFR part 990, and HUD's Financial Management Guidebook 7475.1 and Supplement, as they may be amended.
- G. HUD will not score the Agency under HUD's Public Housing Assessment System (PHAS) or HUD's Section Eight Management Assessment Program (SEMAP), or their successor systems, unless the Agency elects to be scored. If the Agency elects to be scored, the agency will continue to be scored for the duration of the demonstration.
- H. The Agency agrees to cooperate fully with HUD and its contractors in the monitoring and evaluation of the MTW demonstration, to keep records, and to submit reports and other information to HUD as described in the Restated Agreement.
- I. The Agency shall comply with the requirements of the National Environmental Policy Act (NEPA) and other related federal laws and authorities identified in 24 C.F.R. Part 50 or Part 58, as applicable.
- J. The Agency will comply with all applicable nondiscrimination and equal opportunity requirements set forth in 24 C.F.R. § 5.105(a), and will administer its programs and activities in a manner affirmatively to further fair housing. In particular, the Agency must make reasonable accommodations needed by applicants and residents and must make units accessible in accordance with the Needs Assessment and Transition Plan as required under Section 504 of the Rehabilitation Act of 1973 and its implementing regulations.
- K. The Agency will comply with the terms of any applicable court orders or Voluntary Compliance Agreements that are in existence or may come into existence during the term of the Agreement. The Agency further agrees that it will cooperate fully with any investigation by the HUD Office of Inspector General or any other investigative and law enforcement agencies of the U.S. Government.
- L. Unless otherwise provided herein, this Restated Agreement does not apply to Section 8 assistance that is required:
 - 1. To meet existing contractual obligations of the Agency to a third party (such as Housing Assistance Payment contracts with owners under the Agency's Section 8 Housing Choice Voucher program);
 - 2. For payments to other public housing authorities under Section 8 portability billing procedures; or

¹ Agencies are still subject to state and local building codes, and housing codes, and state and local public housing law on inspections.

² The Agency agrees to comply with FDS submission requirements, including the requirement to submit project level financial data in the FDS.

3. To meet particular purposes for which HUD has expressly committed the assistance to the Agency.

The aforementioned covenants made by the Agency are not exclusive, as the Agency must also comply with all requirements applicable to public housing other than both those provisions of the 1937 Act, as amended from time to time, and its implementing regulations specifically waived by the Authorizations contained in this Restated Agreement.

III. Rent Reform Initiatives

The Agency shall establish a reasonable rent policy that is designed to encourage employment and self-sufficiency by participating families, consistent with the purpose of this demonstration. In developing its rent policy, the Agency must adopt a policy for addressing hardship cases. To meet the Department's purposes of evaluating the MTW demonstration, Agencies may randomly assign new participants into the MTW group, which will provide an alternate program/rent structure, and into a control group, which will continue to operate under the 1937 Act requirements, and collect useful participant data at the point of random assignment.

IV. Evaluation

- A. HUD will consider the following criteria when evaluating whether this Agency shall continue in the MTW Demonstration:
 1. The Agency is in compliance with this Restated Agreement.
 2. The Annual MTW Plans and Reports have been satisfactorily completed and submitted in a timely manner, consistent with this Restated Agreement; and
 3. The Agency has demonstrated, through the Annual MTW Plan and Report, that it has used its MTW designation (i.e., engaged in MTW Activities), as set forth in Section 204 of the 1996 Appropriations Act.
- B. If, after the evaluation during FY 2011 and FY 2014, HUD determines that the Agency fails to meet the above criteria, HUD can terminate this Restated Agreement.

V. Amendments and Continuation of Activities

- A. Amendment of this Restated Agreement. This Restated Agreement may be further amended upon mutual agreement of the Agency and HUD. Proposed amendments by the Agency to the Restated Agreement shall be submitted in writing to HUD's Office of Public and Indian Housing, or its successor, only after the Agency has conducted a public hearing, considered comments from the hearing in drafting the proposed amendment, and obtained an approval from the Agency's Board of Commissioners or Directors, as applicable. HUD will respond to the Agency in writing to either approve and execute or disapprove the amendment request. The Statement of Authorizations (Attachment C) may be unilaterally amended by HUD only in order to add to the existing authorizations. The Legacy and Community-Specific Authorizations (Attachment D) may be amended upon mutual agreement between HUD and the Agency. In the event of a conflict between Attachment C and Attachment D, the authorizations in Attachment D supersede the authorizations in Attachment C.

- B. Amendment of the Annual MTW Plan. Amendments to the Annual MTW Plan only need to be made if the proposed MTW activity falls outside the scope of the HUD-approved Annual MTW Plan. An MTW activity is defined as an activity that an Agency participating in the MTW demonstration is authorized to undertake only by means of invoking an authorization included in Attachment C or Attachment D of this Restated Agreement, as opposed to an activity that a non-MTW agency could undertake pursuant to the conventional public housing and Section 8 Housing Choice Voucher programs' statutory and regulatory requirements. Proposed amendments by the Agency to the Annual MTW Plan shall be submitted in writing to HUD's Office of Public and Indian Housing, or its successor, only after the Agency has conducted a public hearing, considered comments from the hearing in drafting the proposed amendment, and obtained an approval from the Agency's Board of Commissioners or Directors, as applicable. HUD will respond in writing to either approve or disapprove the amendment request.

The letter requesting any amendment to the Annual MTW Plan should include the following information in relation to the proposed MTW Activity:

1. Description of the proposed activity;
2. Description of how the activity relates to at least one of the three statutory objectives;
3. Identification and discussion of the anticipated impact of the proposed MTW activity on the stated objective;
4. Description of the baselines and benchmarks that the Agency will use to measure the performance and progress of the MTW activities;
5. Description of the data collection process and metrics the Agency will use to measure how this activity will achieve one or more of the MTW statutory objectives; and
6. The specific provision of the 1937 Act or regulation that is waived under MTW that authorized the Agency to make this change, when applicable.

C. Continuation of Activities.

1. Not later than one year prior to expiration of this Restated Agreement, the Agency shall submit a transition plan to HUD. It is the Agency's responsibility to plan in such a manner that it will be able to end all features of the MTW Plan upon expiration of the Agreement, as HUD cannot guarantee that it will be able to extend any features of the Plan. The transition plan shall describe plans for phasing out of such authorizations/features. The plan shall also include any proposals of authorizations/features of the Restated Agreement that the Agency wishes to continue beyond the expiration of the Restated Agreement. The Agency shall specify the proposed duration, and shall provide justification for extension of such authorization/features. HUD will respond to the Agency in writing in a timely manner. Only authorizations/features specifically approved for extension shall continue beyond the term of the MTW Restated Agreement.

The extended features shall remain in effect only for the duration and in the manner specified in the approved transition plan.

2. HUD will review and respond to timely-submitted transition plans within 75 days or they are deemed approved. To the extent that HUD has questions or feedback within this 75-day period, HUD will transmit such information within a sufficient time period for the Agency to respond and for HUD to approve a transition plan within 75 days of submission of the plan.

VI. Funding

- A. Funding Methodology. During the term of the MTW demonstration, HUD will provide the Agency with public housing operating subsidies, and modernization or capital funds (including development and replacement housing factor funds), and with tenant-based Section 8 assistance, as provided in Attachment A. If the Agency's Attachment A does not describe the funding methodology for any of these funding streams, the Agency's funding will be calculated according to standard HUD calculations of Agency benefits.
- B. Funding Disbursements. The Agency will receive its public housing operating subsidy and Section 8 tenant-based funding in accordance with the following calculation and disbursement requirements:
 1. Operating Fund subsidies
 - a. HUD shall calculate the allocation of Operating Fund subsidies to the Agency in accordance with Attachment A.
 - b. The Agency may use these funds for any eligible activity permissible under Section 9(e)(1) of the 1937 Act or, if the Agency proposes to use the funding as part of a block grant in its Annual MTW Plan, it may use these funds for any eligible activity permissible under Section 8(o), 9(d)(1) and 9(e)(1) consistent with this MTW Restated Agreement.
 2. Capital Funds and Other Grants
 - a. HUD shall calculate the allocation of Capital Fund grants (including replacement housing factor fund grants) to the Agency in accordance with Attachment A. Capital Funds will be disbursed in accordance with standard HUD procedures for the disbursement of public housing Capital Fund Grants.
 - (i) In requisitioning grant funds, the Agency will not be required to provide line item detail, but will request the funds using a single MTW line item; provided however, that the Agency may not accelerate draw downs of funds in order to fund reserves.

- (ii) The Agency may use these funds for any eligible activity permissible under Section 9(d)(1) of the 1937 Act, or if the Agency proposes to use the funding as part of a block grant in its Annual MTW Plan, it may use these funds for any eligible activity permissible under Section 8(o), 9(d)(1) and 9(e)(1) consistent with this MTW Restated Agreement.
 - (iii) The Agency is subject to the requirements of Section 9(j) of the 1937 Act with respect to its Capital Fund Grants.
- b. Section 8 Tenant-Based Assistance
 - (i) HUD shall calculate the allocation of Section 8 Housing Choice Voucher funding to the Agency in accordance with Attachment A.
 - (ii) The Agency may use tenant-based Section 8 funds included in the MTW block grant for any eligible activity permissible under Section 8(o) of the 1937 Act or, if the Agency proposes to use the funding as part of a block grant in its Annual MTW Plan, it may use the funds for any eligible activity permissible under Section 8(o), 9(d)(1) and 9(e)(1) consistent with this MTW Restated Agreement.
- c. The Agency may submit for HUD consideration and approval alternative schedules for disbursement of public housing operating subsidy and Section 8 tenant-based funding to reduce the number of transactions and to address the time lag between making Housing Assistance Payments (HAP) for the large number of Section 8 participants from other jurisdictions (portables) and reimbursement by those jurisdictions. An Agency's request for consideration and approval of an alternative schedule for disbursement shall be subject to certain administrative limitations, such as only one request will be allowed per year.

VII. Administrative Responsibilities

A. Annual MTW Planning and Reporting.

1. Annual MTW Plans

- a. If the Agency has ten percent or more of its housing stock in MTW, the Agency will prepare and submit an Annual MTW Plan, in accordance with Attachment B, or equivalent HUD form as approved by OMB, in lieu of the Five (5) year and Annual Plans required by Section 5A of the 1937 Act.
- b. If the Agency has less than ten percent of its housing stock in MTW, the Agency will continue to complete the Five-Year and Annual Plans required by Section 5A of the 1937 Act. The Agency will also complete a Supplemental Annual MTW Plan, based on Attachment B, or equivalent HUD form as approved by OMB. Only information not included in either

the Five-Year Plan or the Annual Plan will need to be included in the Supplemental Annual MTW Plan (herein also referred to as the Annual MTW Plan).

- c. Three (3) copies of the Annual MTW Plan shall be submitted to HUD: one copy will be provided to HUD Headquarters in hard-copy, one copy to HUD Headquarters in electronic format (i.e., PDF, or Word), and one copy to the Agency's local HUD Field Office.
- d. The Annual MTW Plan is due not later than seventy-five (75) days prior to the start of the Agency's fiscal year, unless otherwise approved by HUD, except in the first year of this Restated Agreement the Agency may submit an amendment to its MTW Plan if it wants to implement initiatives prior to the due date of the subsequent MTW Plan.
- e. Attachment B of this Restated Agreement, or equivalent HUD form as approved by OMB, provides a detailed description of the required elements of the Annual MTW Plan.
- f. The Annual MTW Plan will be submitted to HUD only after:
 - (i) The Agency has provided for citizen participation through public hearing and other appropriate means and is approved by the Board of Commissioners or Directors, as applicable, and
 - (ii) The Agency has taken into account public comments on the program design, including comments from current tenants/participants, to the extent such comments were provided. To document the foregoing, the Agency will submit with the Annual MTW Plan documentation that at least one public hearing was held, that the Plan was available for public comment for at least thirty (30) days, and that the Agency took no less than fifteen (15) days between the public hearing and the approval of the Plan by the Board of Commissioners or Board of Directors in order to incorporate any public comments into the Annual MTW Plan. The Agency will submit these documents to HUD in accordance with Attachment B, or equivalent HUD form as approved by OMB, and will keep these documents on file for HUD review.
- g. HUD shall notify the Agency in writing if HUD objects to any provisions or information therein. When the Agency submits its Annual MTW Plan seventy-five (75) days in advance of its fiscal year, HUD will respond to the Agency within seventy-five (75) days. If HUD does not respond to the Agency within seventy-five (75) days after an on-time receipt of the Agency's Annual MTW Plan, the Agency's Annual MTW Plan is approved and the Agency is authorized to implement that Plan. If HUD does not receive the Agency's Annual MTW Plan seventy-five (75) days before the beginning of the Agency's fiscal year, the Agency's Annual MTW Plan is

not approved until HUD responds. Reasons that HUD may object to a provision or information in the Annual MTW Plan include, but are not limited to, the following:

- (i) The information required in Attachment B, or equivalent HUD form as approved by OMB, is not provided or is deemed insufficient;
 - (ii) The Agency's planned MTW activities are not permissible under MTW Authority or are inconsistent with requirements outside the 1937 Act³;
 - (iii) The Agency's planned MTW activities do not have a clear connection to the statutory goal of the MTW demonstration, which is to provide Agencies with the flexibility to design and test various approaches for providing and administering housing assistance that: (a) reduce cost and achieves greater cost effectiveness in Federal expenditures; (b) give incentives to families with children whose heads of household are either working, seeking work, or are participating in job training, educational or other programs that assist in obtaining employment and becoming economically self-sufficient; and (c) increase housing choices for low-income families; or
 - (iv) There are other good cause factors, such as material misrepresentation, in the submission.
- h. Once HUD approves an MTW Activity, the activity shall remain approved as long as it is included in the Agency's Annual MTW Plan submissions subsequent to the initial approval of the MTW Activity. The approval shall remain in effect until such time as the Agency proposes to modify the activity, initiative, or program.

2. Annual MTW Reports

- a. The Agency will prepare Annual MTW Reports, which will compare the Agency's activities with its Annual MTW Plan. The Annual MTW Report will provide the information necessary for HUD to assess the Agency's activities, in both regular operations and in activities authorized by MTW.
- b. Three (3) copies of the Annual MTW Report shall be submitted to HUD: one copy will be provided to HUD Headquarters in hard-copy, one copy to HUD Headquarters in electronic format (i.e., PDF, or Word), and one copy to the Agency's local HUD Field Office.
- c. The Annual MTW Report will be submitted to HUD for its review annually, no later than ninety (90) days after the end of the Agency's fiscal year.

³ Even if HUD approves a MTW Plan that is inconsistent with an external requirement, such as a state law requirement, the Agency is still subject to the external requirement.

- d. Attachment B of this Restated Agreement, or equivalent HUD form as approved by OMB, provides a detailed description of the required elements of the Annual MTW Report.
 - e. HUD shall notify the Agency in writing if HUD requires additional information or clarifications to the information provided in the Annual MTW Report.
 - f. All HUD forms and other reporting mechanisms required by this Restated Agreement, including any required certifications, will, where appropriate, be included in either the Annual MTW Plan or the Annual MTW Report.
3. HUD reserves the right to request, and the Agency agrees to provide, any information required by law or required for sound administration of the public housing and Section 8 Housing Choice Voucher programs.

B. Other Data Submission Requirements.

- 1. The Agency will submit HUD-50058 data and/or HUD-50058 MTW (or their replacement forms) data to HUD's Public and Indian Housing Information Center (PIC) system, or its successor. (Note that the use of the HUD-50058 MTW form is restricted to the MTW agencies that have implemented MTW Activities that prevent use of the standard 50058 form.) These submissions will be in compliance with HUD's 50058 and/or 50058 MTW submission requirements for MTW public housing authorities. The Agency will maintain current building and unit information in the development module of the PIC Inventory Management System (IMS).
- 2. The Agency will provide basic data about the Agency (e.g., address, phone number, e-mail address, etc.) to HUD through the PIC/IMS system, or its successor system.
- 3. The Agency will complete an annual audit pursuant to the Office of Management and Budget (OMB) Circular A-133 (including the Compliance Supplement, as determined by the auditor to be relevant to MTW). The A-133 Audit must be submitted to HUD in accordance with HUD regulations; a separate copy of the most recently completed audit must be submitted to the Office of Public Housing Investments, or its successor Headquarters Office responsible for national oversight of the MTW demonstration.
- 4. The Agency will provide data to HUD through FDS, or its successor system, as required by the Public Housing Assessment System (PHAS) regulations and procedures as they may be amended.
- 5. The Agency will provide HUD with an electronic version of the Admissions and Continued Occupancy Policy and Administrative Plan upon HUD's request.
- 6. The Agency will provide HUD with a Performance and Evaluation Report for Capital Fund activities not included in the MTW Block Grant by including this

as a supplement to Attachment B, or equivalent HUD form as approved by OMB.

In addition to the reporting requirements listed above, the Agency is required to comply with any and all HUD reporting requirements that are not specifically waived by HUD.

- C. Annual MTW Monitoring Site Visit. HUD and/or its contractors will conduct at least one formal Site Visit to the Agency each year. The purpose of these visits will be to confirm reported Agency activities, to review the status and effectiveness of the Agency's MTW strategies, and to identify and resolve outstanding MTW related issues. The Agency shall give HUD and/or its contractors unimpeded access to all requested sources of information including access to files, access to units, and an opportunity to interview Agency staff and assisted residents.
- D. Single Point of Contact. HUD and the Agency shall each appoint a liaison as a single point of contact in implementing the Restated Agreement.

VIII. Termination and Default

- A. If the Agency violates this Restated Agreement, HUD is authorized to take any corrective or remedial action described in this Article VIII for Agency default. HUD will give the Agency written notice of any default. The Agency will have the opportunity to cure such default within 30 days of the date of said notice, or to demonstrate within said time period, by submitting substantial evidence satisfactory to HUD, that it is not in default. If the default is not susceptible to being cured within said 30 day period, the Agency will demonstrate, to HUD's satisfaction, that the Agency has taken actions necessary to cure the default and that the default is curable within 90 days from the date of the default notice. Additionally, the Agency must covenant to prosecute such cure diligently and complete such cure within the 90 day period, unless HUD, in its sole judgment, determines that immediate action is necessary, and therefore has discretion to institute the remedies under Section VIII.C. of this Restated Agreement.
- B. The following are reasons that HUD may declare the Agency in default of this Restated Agreement:
 - 1. The Agency has not corrected HUD identified performance deficiencies within a reasonable period of time;
 - 2. Material misrepresentation in the application process that led to the Original MTW Agreement or this current Restated Agreement;
 - 3. Use of funds subject to this Restated Agreement for a purpose other than as authorized by this Restated Agreement;
 - 4. Material noncompliance with legislative, regulatory, or other requirements applicable to this Restated Agreement;
 - 5. Material breach of this Restated Agreement; and/or

6. Material misrepresentation in the Annual MTW Plan or Report submission by the Agency.
- C. If the Agency is in default, HUD may, among other remedies, undertake any one or all of the following remedies:
1. Suspend payment or reimbursement for any MTW activities affected;
 2. Suspend the Agency's authority to make draws or receive or use funds for affected activities;
 3. Change the method of payment to the Agency;
 4. Require additional reporting by the Agency on the deficient areas and the steps being taken to address the deficiencies;
 5. Require the Agency to prepare and follow a HUD-approved schedule of actions and/or a management plan for properly completing the activities approved under this Restated Agreement;
 6. Suspend the MTW waiver authorization for the affected activities;
 7. Prohibit payment or reimbursement for any MTW Activities affected by the default;
 8. Require reimbursement by the Agency to HUD for amounts used in violation of this Restated Agreement;
 9. Reduce/offset the Agency's future funding;
 10. Terminate this Restated Agreement and require the Agency to transition out of MTW;
 11. Take any other corrective or remedial action legally available; and/or
 12. Implement administrative or judicial receivership of part or all of the Agency.
- D. The Agency may choose to terminate this Restated Agreement at any time. Upon HUD's receipt of written notification from the Agency and a copy of a board resolution approving termination, termination will be effective. The Agency will then begin to transition out of MTW, and will work with HUD to establish an orderly phase-out of MTW activities, consistent with Section IV C of this Restated Agreement.

12-11-07

This Agreement, including all Attachments, is effective upon execution, except as otherwise provided herein.

HOUSING AUTHORITY OF

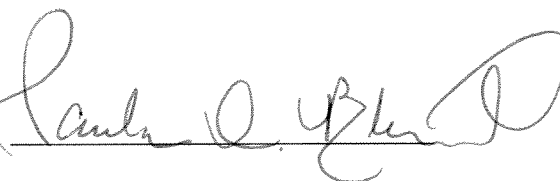
City of San Diego

BY: 

ITS: President & CEO

Date: 12/8/08

UNITED STATES DEPARTMENT OF
HOUSING AND URBAN DEVELOPMENT

BY: 

ITS: Assistant Secretary

Date: 1/14/09

ATTACHMENT A
CALCULATION OF SUBSIDIES
TO
MOVING TO WORK AGREEMENT
BETWEEN
U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT
AND THE
SAN DIEGO HOUSING COMMISSION

Upon execution of the Moving to Work (MTW) Agreement (MTW Agreement) between the U.S. Department of Housing and Urban Development (HUD) and the San Diego Housing Commission (Agency), HUD will provide the Agency with operating subsidy, capital funds, and Housing Choice Voucher Program assistance as described below.

A. Operating Subsidy

1. The calculation of operating subsidy will continue in accordance with applicable operating subsidy formula law and regulations.
2. For operating funds provided in years prior to the execution of the MTW Agreement, the Agency may use any accumulated operating reserves for eligible MTW purposes, subject to applicable provisions of the MTW Agreement.
3. All funds programmed for MTW purposes will be recorded and drawn from MTW designated line items on relevant HUD forms.

B. Capital Funds Program

1. The Agency's formula characteristics and grant amounts will continue to be calculated in accordance with applicable law and regulations.
2. For capital funds provided in years prior to the execution of the MTW Agreement, the Agency may submit, and HUD will, as permitted by law, approve, a request to reprogram, by grant year, any unobligated funds for eligible MTW purposes. Such requests will be made in accordance with current procedures governing amendments to the Annual Plan, except that no public consultation will be necessary prior to submission of the request.
3. All funds programmed for MTW purposes will be recorded and drawn from MTW designated line items on relevant HUD forms.

C. Housing Choice Voucher Program (HCVP) Subsidy

1. For purposes of the Housing Choice Voucher Program (HCVP) funding, the Initial Year is calendar year 2009 (January 1, 2009 through December 31, 2009).
2. For purposes of the Housing Choice Voucher program funding, the base period for calculating initial funding is calendar year 2008 (January 1, 2008 through December 31, 2008).
3. Initial Year (CY 2009) HCVP housing assistance payments (HAP) subsidy will be based on actual HAP expenses incurred by the Agency as reported in the Voucher Management System

(VMS) in the base period (CY 2008). Initial Year administrative fees will be based on application of the FY09 administrative fee rates to the base period (CY 2008) baseline leasing, and based on the assumption that all new units are leased.

4. Funding eligibility for the HCVP HAP in the Initial Year of this agreement will be equal to the amounts determined under the preceding paragraph, adjusted for new units not fully represented in those amounts, and adjusted by the Annual Adjustment Factor (AAF) and by the applicable proration factor. The Administrative Fee funding will be adjusted for new units (calculated as provided in paragraph 11 below). For subsequent years, the HAP subsidy will be equal to the previous year's HAP subsidy eligibility adjusted by the current year's AAF and applicable proration factor percentage. The Administrative Fee funding for subsequent years will be adjusted for new units (calculated as provided in paragraph 11 below) and in accordance with the Appropriations Act in effect, assuming all vouchers are in use. Funding eligibility in any year is subject to the requirements of the applicable Appropriations Act as it applies to MTW agencies.

5. If the Agency receives incremental HCVP funding, the Agency must decide to either apply the incremental funding to their MTW block grant or to keep the incremental funding separate, as provided by law. In some cases, incremental funding may not be eligible for inclusion in the block grant as may be dictated by law.

6. All HCVP funding provided by HUD and not restricted under item 5, above, or otherwise prohibited by law in the Initial Year and subsequent years under this agreement, may be eligible for inclusion in the MTW flexible block grant.

7. The Agency will be eligible to receive Family Self Sufficiency coordinator funding in accordance with available appropriations and requirements.

8. There will be no year-end settlement of annual funds provided for the MTW HCVP subsidy. All funds provided through this calculation will remain available for authorized purposes.

9. Funds accrued from January 1, 2008 and forward in the Net Restricted Assets account resulting from HAP funding that has exceeded HAP expenses shall remain available. All funds in the Net Restricted Assets account may be used for authorized purposes, subject to applicable provisions of the MTW Agreement and future appropriations statutes. Any sum held by the Agency as excess administrative funds (Net Unrestricted Assets) shall remain available and may be used for authorized purposes subject to applicable provisions of the MTW Agreement and future appropriations statutes.

10. Funding for five-year mainstream vouchers, one-year mainstream vouchers, Family Unification Program vouchers, Veterans' Affairs Supportive Housing vouchers, and moderate rehabilitation vouchers, whether new allocations or renewals of existing vouchers, shall not be included in the MTW Block Grant.

11. The Agency will receive administrative fees to administer any incremental vouchers received, including Family Self Sufficiency funding, in accordance with laws and regulations in effect. Such fees will be calculated assuming all vouchers are in use.

Form 50900: Elements for the Annual MTW Plan and Annual MTW Report

Attachment B

to
AMENDED AND RESTATED MOVING TO WORK AGREEMENT
BETWEEN
U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT
AND
AGENCY

The information on this form is being collected so the Department is able to respond to Congressional and other inquiries regarding outcome measures obtained and promising practices learned throughout the Moving to Work (MTW) demonstration. The information reported through this form is not confidential. Respondents will report outcome information to accurately evaluate the effects of MTW policy changes on residents, the Agency's operations and the local community. The estimated burden per year per Agency is 81 hours. Responses to the collection of information are required to obtain a benefit or to retain a benefit. The Agency may not conduct or sponsor, and are not required to respond to, a collection of information unless that collection displays a valid OMB control number. All MTW Agencies will provide the following required elements in their Annual MTW Plans and Reports, consistent with the requirements of Section VII of the standard Amended and Restated Agreement, and will follow the following order and format.

Annual MTW Plan	Annual MTW Report
I. Introduction	
A. Table of Contents, which includes all the required elements of the Annual MTW Plan; and	A. Table of Contents, which includes all the required elements of the Annual MTW Report; and
B. Overview of the Agency's MTW goals and objectives for the year, including new and ongoing MTW activities. An MTW activity is defined as any activity the Agency is engaging in that requires MTW flexibility to waive statutory or regulatory requirements.	B. Overview of the Agency's ongoing MTW goals and objectives.
II. General Housing Authority Operating Information	
A. Housing Stock Information:	A. Housing Stock Information:
Number of public housing units at the beginning of the year;	Number of public housing units at the end of the Plan year, discuss any changes over 10%;
General description of any planned significant capital expenditures by development (>30% of the Agency's total budgeted capital expenditures for the fiscal year);	Description of any significant capital expenditures by development (>30% of the Agency's total budgeted capital expenditures for the fiscal year);

Description of any new public housing units to be added during the year by development (specifying bedroom size, type, accessible features, if applicable);	Description of any new public housing units added during the year by development (specifying bedroom size, type, accessible features, if applicable);
Number of public housing units to be removed from the inventory during the year by development specifying the justification for the removal;	Number of public housing units removed from the inventory during the year by development specifying the justification for the removal;
Number of MTW Housing Choice Vouchers (HCV) units authorized;	Number of MTW HCV authorized at the end of the Plan year, discuss any changes over 10%;
Number of non-MTW HCV units authorized; and	Number of non-MTW HCV authorized at the end of the Plan year, discuss any changes over 10%;
Number of HCV units to be project-based during the Plan year, including description of each separate project.	Number of HCV units project-based during the Plan year, including description of each separate project; and
	Overview of other housing managed by the Agency, eg., tax credit, state-funded, market rate.
B. Leasing information, Planned – this information is estimated and may be subject to change during the Plan year.	B. Leasing Information - Actual
Anticipated total number of MTW PH units leased in the Plan year;	Total number of MTW PH units leased in Plan year;
Anticipated total number of non-MTW PH units leased in the Plan year;	Total number of non-MTW PH units leased in Plan year;
Anticipated total number of MTW HCV units leased in the Plan year;	Total number of MTW HCV units leased in Plan year;
Anticipated total number of non-MTW HCV units leased in the Plan year; and	Total number of non-MTW HCV units leased in Plan year;
Description of anticipated issues relating to any potential difficulties in leasing units (HCV or PH).	Description of any issues related to leasing of PH or HCVs; and
Optional in Plan: Number of project-based vouchers in-use at the start of the Plan year.	Number of project-based vouchers committed or in use at the end of the Plan year, describe project where any new vouchers are placed (include only vouchers where Agency has issued a letter of commitment in the Plan year).
C. Waiting List Information	C. Waiting List Information
Description of anticipated changes in waiting lists (site-based, community-wide, HCV, merged); and	Number and characteristics of households on the waiting lists (all housing types) at the end of the plan year; and
Description of anticipated changes in the number of families on the waiting list(s) and/or opening and closing of the waiting list(s).	Description of waiting lists (site-based, community-wide, HCV, merged) and any changes that were made in the past fiscal year.
III. Non-MTW Related Housing Authority Information (Optional)	
A. List planned sources and uses of other HUD or other Federal Funds (excluding HOPE VI); and	A. List planned vs actual sources and uses of other HUD or other Federal Funds (excluding HOPE VI); and

B. Description of non-MTW activities proposed by the Agency.	B. Description of non-MTW activities implemented by the Agency.
IV. Long-term MTW Plan (Optional)	
Describe the Agency's long-term vision for the direction of its MTW program, extending through the duration of the MTW Agreement.	Describe the Agency's long-term vision for the direction of its MTW program, extending through the duration of the MTW Agreement.

V. Proposed MTW Activities: HUD approval requested	
(provide the listed items below grouped by each MTW activity)	
A. Describe each proposed MTW activity;	A. Describe any activities that were proposed in the Plan, approved by HUD, but not implemented, and discuss why these activities were not implemented.
B. Describe how each proposed activity relates to at least one of the three statutory objectives;	(All proposed activities that are granted approval by HUD will be reported on in Section VI as "ongoing activities.")
C. Identify and discuss the anticipated impact of each proposed MTW activity on the stated objective;	
D. Describe baselines, proposed benchmarks, and metrics to assess outcomes, include anticipated schedules;	
E. Describe the data collection process and the proposed metrics the Agency will use to measure how this activity will achieve one or more of the MTW statutory objectives;	
F. Cite the authorization(s) detailed in Attachment C or D of this Restated Agreement that give the Agency the flexibility to conduct the activity. Every reasonable effort will be made by the Agency to reference the complete and correct statute or regulation application to a particular initiative; however, failure to cite the correct or entire statute or regulation will not be grounds for disapproval of such initiative in an Annual MTW Plan nor will such failure invalidate the use of the MTW authority necessary to implement and support the initiative; and	
G. Provide the following information for any rent reform initiatives:	
· Agency's Board approval of policy;	(All proposed activities that are granted approval by HUD will be reported on in Section VI as "ongoing activities.")
· Impact Analysis;	
· Annual reevaluation of rent reform initiative;	
· Hardship case criteria;	
· Transition period; and	
· Documentation of public hearing (may be same as Annual Plan hearing).	
VI. Ongoing MTW Activities: HUD approval previously granted	
(provide the listed items below grouped by each MTW activity)	
A. List activities continued from the prior plan year(s); specify the Plan Year in which the activity was first identified and implemented;	A. List activities continued from the prior Plan year(s); specify the Plan Year in which the activity was first identified and implemented;

B. Provide an update on the status of the activity;	B. Provide detailed information on the impact of the activity and compare against the proposed benchmarks, and metrics to assess outcomes, including if activity is on schedule. For rent reform initiatives, describe the result of any hardship requests. [The Agency will need to develop benchmarks and evaluation metrics for all ongoing MTW activities. For MTW activities that were implemented prior to the execution of this Amended and Restated Agreement, the Agency does not have to provide this information for past years. The Agency will establish the benchmarks and metrics in the first year that it Reports under this new format.];
C. For the Plan year, indicate if the Agency anticipates any changes, modifications, or additions to Attachment C authorizations; and	C. If benchmarks were not achieved or if the activity was determined ineffective, provide a narrative explanation of the challenges, and, if possible, identify potential new strategies that might be more effective;
D. Describe if the Agency is using outside evaluators.	D. If benchmarks or metrics have been revised; identify any new indicator(s) of activities status and impact (e.g. after 2 years of rent reform only 6 hardship cases);
	E. If data collection methodology has changed, describe original data collection methodology and any revisions to the process or change in data collected;
	F. If a different authorization from Attachment C or D was used than was proposed in the Plan, provide the new authorization and describe why the change was necessary; and
	G. Cite the specific provision(s) of the Act or regulation that is waived under MTW (as detailed in Attachment C or D of this Restated Agreement) that authorized the Agency to make the change, and briefly describe if and how the waived section of the Act or regulation was necessary to achieve the MTW activity. With respect to requirements related to statutory or regulatory cites, the following is agreed: Every effort will be made by the Agency to reference the complete and correct statute or regulation application to a particular initiative; However, failure to cite to the correct or entire statute or regulation will not be grounds for disapproval of such initiative in an Annual Plan nor will such failure invalidate the use of the MTW authority necessary to implement and support the initiative.
VII. Sources and Uses of Funding	
A. List planned sources (Operating, Capital, HCV) and uses of MTW funds;	A. List planned vs actual sources (Operating, Capital, and HCV) and uses of MTW Funds (excluding HOPE VI). Provide a narrative description of any major changes from the approved MTW Plan;

B. List planned sources and uses of State or local funds;	B. List planned vs actual sources and uses of State or local funds;
C. If applicable, list planned sources and uses of the COCC;	C. If applicable, list planned vs actual sources and uses of the COCC;
D. If using a cost allocation or fee-for-service approach that differs from 1937 Act requirements, describe the deviations and the reasons therefore; and	D. If using a cost allocation or fee-for-service approach that differs from 1937 Act requirements, describe the actual deviations that were made during the Plan year; and
E. List or describe use of single-fund flexibility, if applicable, describe uses across traditional program lines or special circumstances in support of an MTW activity.	E. List or describe planned vs actual use of single-fund flexibility.
F. Optional - List reserve balances at beginning of the Plan year.	F. Optional - List planned vs actual reserve balances at the end of the plan year.
G. Optional - In Plan Appendix, provide planned sources and uses by AMP.	G. Optional - In plan appendix, provide planned vs actual sources and use by AMP.
VIII. Administrative	
The Agency will provide the following:	The Agency will provide the following:
A. Resolution signed by the Board of Commissioners, or other authorized PHA official if there is no Board of Commissioners, adopting the Annual MTW Plan Certification of Compliance (provided at the end of this Attachment B); and	A. Description of progress on the correction or elimination of observed deficiencies cited in monitoring visits, physical inspections, or other oversight and monitoring mechanisms, if applicable;
B. Description of any planned or ongoing Agency-directed evaluations of the demonstration, if applicable.	B. Results of latest Agency-directed evaluations of the demonstration, as applicable;
	C. Performance and Evaluation Report for Capital Fund activities not included in the MTW Block Grant, as an attachment to the Report; and
	D. Certification that the Agency has met the three statutory requirements of: 1) assuring that at least 75 percent of the families assisted by the Agency are very low-income families; 2) continuing to assist substantially the same total number of eligible low-income families as would have been served had the amounts not been combined; and 3) maintaining a comparable mix of families (by family size) are served, as would have been provided had the amounts not been used under the demonstration.

**Annual Moving to Work Plan
Certifications of Compliance**

**U.S. Department of Housing and Urban Development
Office of Public and Indian Housing**

**Certifications of Compliance with Regulations:
Board Resolution to Accompany the Annual Moving to Work Plan**

Acting on behalf of the Board of Commissioners of the Public Housing Agency (PHA) listed below, as its Chairman or other authorized PHA official if there is no Board of Commissioners, I approve the submission of the Annual Moving to Work Plan for the PHA fiscal year beginning _____, hereinafter referred to as "the Plan", of which this document is a part and make the following certifications and agreements with the Department of Housing and Urban Development (HUD) in connection with the submission of the Plan and implementation thereof:

1. The PHA published a notice that a hearing would be held, that the Plan and all information relevant to the public hearing was available for public inspection for at least 30 days, that there were no less than 15 days between the public hearing and the approval of the Plan by the Board of Commissioners, and that the PHA and conducted a public hearing to discuss the Plan and invited public comment.
2. The Agency took into consideration public and resident comment before approval of the Plan by the Board of Commissioners or Board of Directors in order to incorporate any public comments into the Annual MTW Plan;
3. The PHA will carry out the Plan in conformity with Title VI of the Civil Rights Act of 1964, the Fair Housing Act, section 504 of the Rehabilitation Act of 1973, and title II of the Americans with Disabilities Act of 1990.
4. The PHA will affirmatively further fair housing by examining their programs or proposed programs, identify any impediments to fair housing choice within those programs, address those impediments in a reasonable fashion in view of the resources available and work with local jurisdictions to implement any of the jurisdiction's initiatives to affirmatively further fair housing that require the PHA's involvement and maintain records reflecting these analyses and actions.
5. The PHA will comply with the prohibitions against discrimination on the basis of age pursuant to the Age Discrimination Act of 1975.
6. The PHA will comply with the Architectural Barriers Act of 1968 and 24 CFR Part 41, Policies and Procedures for the Enforcement of Standards and Requirements for Accessibility by the Physically Handicapped.
7. The PHA will comply with the requirements of section 3 of the Housing and Urban Development Act of 1968, Employment Opportunities for Low-or Very-Low Income Persons, and with its implementing regulation at 24 CFR Part
8. The PHA will comply with requirements with regard to a drug free workplace required by 24 CFR Part 24, Subpart F.
9. The PHA will comply with requirements with regard to compliance with restrictions on lobbying required by 24 CFR Part 87, together with disclosure forms if required by this Part, and with restrictions on payments to influence Federal Transactions, in accordance with the Byrd Amendment and implementing regulations at 49 CFR Part 24.
10. The PHA will comply with acquisition and relocation requirements of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 and implementing regulations at 49 CFR Part 24 as applicable.
11. The PHA will take appropriate affirmative action to award contracts to minority and women's business enterprises under 24 CFR 5.105(a).
12. The PHA will provide HUD or the responsible entity any documentation that the Department needs to carry out its review under the National Environmental Policy Act and other related authorities in accordance with 24 CFR Part 58.
13. With respect to public housing the PHA will comply with Davis-Bacon or HUD determined wage rate requirements under section 12 of the United States Housing Act of 1937 and the Contract Work Hours and Safety Standards Act.
14. The PHA will keep records in accordance with 24 CFR 85.20 and facilitate an effective audit to determine compliance with program requirements.
15. The PHA will comply with the Lead-Based Paint Poisoning Prevention Act and 24 CFR Part 35.

16. The PHA will comply with the policies, guidelines, and requirements of OMB Circular No. A-87 (Cost Principles for State, Local and Indian Tribal Governments) and 24 CFR Part 85 (Administrative Requirements for Grants and Cooperative Agreements to State, Local and Federally Recognized Indian Tribal Governments.).

17. The PHA will undertake only activities and programs covered by the Plan in a manner consistent with its Plan and will utilize covered grant funds only for activities that are approvable under the Moving to Work Agreement and Statement of Authorizations and included in its Plan.

18. All attachments to the Plan have been and will continue to be available at all times and all locations that the Plan is available for public inspection. All required supporting documents have been made available for public inspection along with the Plan and additional requirements at the primary business office of the PHA and at all other times and locations identified by the PHA in its Plan and will continue to be made available at least at the primary business office of the PHA.

PHA Name

PHA Number/HA Code

I hereby certify that all the information stated herein, as well as any information provided in the accompaniment herewith, is true and accurate. Warning: HUD will prosecute false claims and statements. Conviction may result in criminal and/or civil penalties. (18 U.S.C. 1001, 1010, 1012; 31 U.S.C. 3729, 3802)

Name of Authorized Official

Title

Signature

Date

SDHC Note: A summary of the Plan initiatives was available for 30 days before the hearing, however, the Plan and all the attachments were not available until after the hearing. Any comments received will be forwarded.

ATTACHMENT C
STATEMENT OF AUTHORIZATIONS
TO
AMENDED AND RESTATED MOVING TO WORK AGREEMENT
BETWEEN
U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT
AND
AGENCY

A. General Conditions

1. This Statement of Authorizations describes the activities that the Public Housing Authority (Agency) may carry out under the Moving to Work (MTW) Demonstration program, subject to the terms and conditions of the Amended and Restated Moving to Work Demonstration Agreement (Restated Agreement) between the Agency and the U.S. Department of Housing and Urban Development (HUD).
2. Unless otherwise provided in Attachment D of the Restated Agreement, the Agency's MTW Demonstration Program applies to all of the Agency's public housing assisted units (including Agency-owned properties and units comprising a part of mixed-income, mixed finance communities) tenant-based Section 8 voucher assistance (hereinafter referred to as the "Housing Choice Voucher Program"), Section 8 project-based voucher assistance under Section 8(o) and Homeownership units developed using Section 8(y) voucher assistance.
3. The purpose of the Statement of Authorizations is to delegate to the Agency the authority to pursue locally driven policies, procedures and programs with the aim of developing better, more efficient ways to provide housing assistance and incentives to self-sufficiency to low, very-low, and extremely low-income families. The authorizations listed in this Attachment C are granted fully without requiring any additional HUD authorizations, as necessary to implement the activities described in the Annual MTW Plan. The Agency may proceed with activities based upon these authorizations once the activity has been included in the Annual MTW Plan, in accordance with Attachment B, and HUD has approved the Plan and activities. HUD will review and approve these documents to ensure that the Annual MTW Plan has provided meaningful citizen participation, taking into account comments from a public hearing and any other comments on the proposed program, as well as providing for, receiving, and meaningfully considering comments from current and prospective residents who would be affected. HUD will also review in order to ascertain that these activities are within the MTW authorizations provided by HUD.
4. The Agency reaffirms that it will comply with all applicable nondiscrimination and equal opportunity requirements set forth in 24 CFR 5.105(a), and will administer its programs and activities in a manner affirmatively to further fair housing. In particular, the Agency

must make reasonable modifications and accommodations needed by applicants and residents and must make units accessible in accordance with the Needs Assessment and Transition Plan as required under Section 504 of the Rehabilitation Act of 1973 and its implementing regulations.

B. Authorizations Related to Both Public Housing and Section 8 Housing Choice Vouchers

1. Single Fund Budget with Full Flexibility

This authorization waives certain provisions of Sections 8 and 9 of the 1937 Act and 24 C.F.R. 982, and 990 as necessary to implement the Agency's Annual MTW Plan.

- a. The Agency may combine funding awarded to it annually pursuant to Section 8(o), 9(d) and 9(e) of the 1937 Act into a single, authority-wide funding source ("MTW Funds"). However, section 9(d) funds are still subject to the obligation and expenditure deadlines and requirements provided in section 9(j) despite the fact that they are combined in a single fund. The funding amount for the MTW Funds may be increased by additional allocations of housing choice vouchers to which the Agency is entitled over the term of the Agreement. Special purpose vouchers will not be included in the MTW Funds during their initial term, though some may be included in the MTW Funds upon renewal.
- b. The Agency may use MTW Funds for any eligible activity under Sections 9(d)(1), 9(e)(1) and Section 8(o) of the 1937 Act. Within the scope of the permissible eligible activities, the Agency can carry out the purposes of the MTW Demonstration Program to provide flexibility in the design and administration of housing assistance to eligible families, to reduce cost and achieve greater cost effectiveness in Federal expenditures, to give incentives to families with children where the head of household is working, seeking work, or is preparing for work by participating in job training, educational programs, or programs that assist people to obtain employment and become economically self-sufficient, and to increase housing choices for low-income families, through activities that would otherwise be eligible under sections 8 and 9 of the 1937 Act, including, but not limited to, the following activities:
 - i. Provision of Capital funds or operating assistance to housing previously developed or operated pursuant to a contract between HUD and the Agency or newly acquired or developed pursuant to section ii below.
 - ii. The acquisition, new construction, reconstruction or moderate or substantial rehabilitation of housing (including, but not limited to, assisted living, or other housing as deemed appropriate by the Agency, in accordance with its mission), or commercial facilities consistent with the objectives of the demonstration. Such activities may include but are not limited to real property acquisition, site improvement, development of utilities and utility services and energy efficiency systems, conversion, demolition, financing, administration and planning costs, relocation and other related activities; provided, however, that prior HUD

approval is required for the development of any incremental public housing units, pursuant to Section 9(g)(3) of the 1937 Act.

- iii. The provision of housing or employment-related services or other case management activities, such as housing counseling in connection with rental or homeownership assistance, energy auditing, activities related to the provision of self-sufficiency and other services, employment counseling, education, training and other services related to assisting tenants, owners, contractors, and other persons or entities participating or seeking to participate in other housing or training and educational activities assisted pursuant to this section.
- iv. The provision of management services, including preparation of work specifications, loan processing, inspections, tenant selection, management of tenant and project-based rental assistance and management of housing projects or other facilities or operations developed under this program.
- v. The provision of safety, security, and law enforcement measures and activities appropriate to protect residents of housing from crime.
- vi. The provision of Housing Choice Voucher assistance or project-based rental assistance (under Section 8(o)), alone or in conjunction with other private or public sources of assistance.
- vii. The preservation of public housing and/or Housing Choice Voucher units currently serving people of low income or the acquisition and/or development of new units for people of low income, provided that all rehabilitation and construction is done in accordance with the requirements of Section 504 of the Rehabilitation Act and where applicable, the design and construction requirements of the Fair Housing Act.
- viii. If the Agency chooses to establish single fund flexibility, the Agency is authorized to use housing assistance payments for purposes other than payments to owners, so long as these purposes are consistent with other eligible uses of section 8 and section 9 funds.
- c. These activities may be carried out by the Agency, by an entity, agent, or instrumentality of the Agency, a partnership, a grantee, contractor, or other appropriate party or legal entity.
- d. The Agency's expenditures must comply with OMB Circular A-87, which provides basic guidelines for the use of federal funds, and with this MTW Agreement.
- e. The Agency may use capital funds (including development and replacement housing factor funds) in accordance with this Agreement.

2. Partnerships with For-Profit and Non-Profit Entities

The Agency may partner with for-profit and non-profit entities, subject to 24 C.F.R. Part 85 and 941.602(d), including, mixed-income, mixed-finance development partners and third party management companies, as well as affiliates and instrumentalities of the Agency ("Agency Partners"), to implement and develop all or some of the initiatives that may comprise the Agency's MTW Demonstration Program. The Agency may, with respect to MTW eligible activity and when working with or partnering with such partners, make available to Agency Partners the least restrictive regulatory requirements allowable based on Agency's participation in the MTW Demonstration Program and that agreements with Agency Partners may reflect the implementation of less restrictive regulatory requirements. *This authorization waives certain provisions of Sections 13 and 35 of the 1937 Act and 24 C.F.R. 941 Subpart F as necessary to implement the Agency's Annual MTW Plan.*

3. Definition of Elderly Family

The Agency is authorized to amend the definition of elderly to include families with a head of household or family member who is at least 55 years old, and must be in compliance with the all Fair Housing Requirements, in particular the Housing for Older Persons Act of 1995. *This authorization waives certain provisions of Section 3 (b)(3) and (G) of the 1937 Act and 24 C.F.R. 5.403 as necessary to implement the Agency's Annual MTW Plan.*

4. Transitional/Conditional Housing Program

The Agency may develop and adopt new short-term transitional housing programs, consistent with an eligible use of section 8 and 9 funds, with supportive services in one or more buildings in collaboration with local community-based organizations and government agencies. Successful participants in these programs will be eligible for transfer to the Agency's public housing or housing choice voucher programs. The Agency will ensure that these programs do not have a disparate impact on protected classes, and will be operated in a manner that is consistent with the requirements of Section 504 of the Rehabilitation Act. More specifically, under no circumstances will residents of such programs be required to participate in supportive services that are targeted at persons with disabilities in general, or persons with any specific disability. In addition, admission to any of the programs developed under this section will not be conditioned on the presence of a disability or a particular disability. This section is not intended to govern the designation of housing that is subject to Section 7 of the 1937 Act. *This authorization waives certain provisions of Sections 3, 4, 5, 8, and 9 of the 1937 Act and 24 C.F.R. 941, and 960 Subpart B as necessary to implement the Agency's Annual MTW Plan.*

5. Investment Policies

Subject to HUD approval, the Agency is authorized to adopt investment policies consistent with state law to the extent such policies are in compliance with applicable OMB circulars and other federal laws. The Agency shall invest only in securities authorized under state law that will allow the flexibility to invest productively and efficiently. *This authorization waives certain provisions of Section 6(c)(4) of the 1937 Act and 24 C.F.R. 982.156 as necessary to implement the Agency's Annual MTW Plan.*

C. Authorizations Related to Public Housing Only

1. Site Based or Geographic Area Waiting List System

The Agency is authorized to implement a locally designed waiting list system in lieu of the specific procedural requirements of 24 C.F.R. Part 903 provided that it provides applicants with a reasonable choice of location in accordance with title VI of the Civil Rights Act, the Fair Housing Act, and other applicable civil rights requirements. The Agency may implement additional site-based waiting lists under this MTW Agreement. Such additional site-based waiting lists will be developed, at the Agency's option, to address various situations, including, but not limited to the following: (1) any existing or new or mixed-income, mixed finance communities; (2) any on-site and/or off-site public housing replacement units developed in support of the Agency's redevelopment or HOPE VI efforts, if any; (3) any specially designated public housing or project-based communities; and (4) combining or separating waiting lists for Section 8 tenant-based or project-based assistance, public housing rental communities, homeownership opportunities, and mixed-income, mixed-finance communities. *This authorization waives certain provisions of Section 6(r) of the 1937 Act and 24 C.F.R. 903.7 as necessary to implement the Agency's Annual MTW Plan.*

2. Local Preferences and Admission and Continued Occupancy Policies and Procedures

The Agency is authorized to develop and adopt local preferences and admission policies and procedures for admission into the public housing program in lieu of HUD statutes, regulations or other requirements based in the 1937 Act so long as the families assisted qualify as low income, and that the total mix of families assisted meets the requirements of part I.C of the Amended and Restated MTW Agreement. The Agency is required to revise the Admissions and Continued Occupancy Policy (ACOP), to implement changes in public housing occupancy policy as a result of the MTW program. Regardless of changes to the Agency's adopted ACOP policies and procedures, the Agency must comply with Sections I(B)(1) and II(D) of this Agreement. The Agency is subject to state and local preferences law. *This authorization waives certain provisions of Section 3 of the 1937 Act and 24 C.F.R. 960.206 as necessary to implement the Agency's Annual MTW Plan.*

3. Deconcentration Policy

The Agency is authorized to develop and adopt a local policy designed to provide for deconcentration and income mixing in public housing communities. *This authorization waives certain provisions of Section 16(3)(B) of the 1937 Act and 24 C.F.R. 903.2 as necessary to implement the Agency's Annual MTW Plan.*

4. Initial, Annual and Interim Income Review Process

The Agency is authorized to restructure the initial, annual and interim review process in the public housing program in order to affect the frequency of the reviews and the methods and process used to establish the integrity of the income information provided. In addition, the Agency is expressly authorized to adopt a local system of income verification in lieu of the current HUD system. For example, the Agency may implement alternate time frames for validity of verification or adopt policies for verification of income and assets through sources other than those currently allowed under the 1937 Act. *This authorization waives certain provisions of sections 3(a)(1) and 3(a)(2) of the 1937*

Act and 24 C.F.R. 966.4 and 960.257, as necessary to implement the Agency's Annual MTW Plan.

5. Use of Public Housing as an Incentive for Economic Progress

The Agency is authorized to modify current public housing occupancy policies to use housing as an incentive for making economic progress, as long as Section II.C. of the MTW Agreement is adhered to. Such modifications may include revising maximum income limits for admission or continued occupancy. Families denied admission or continued occupancy shall continue to be entitled to the right to an informal hearing. *This authorization waives certain provisions of Section 6(c) of the 1937 Act and 24 C.F.R. 960.201, as necessary to implement the Agency's Annual MTW Plan.*

6. Incentives for Underutilized Developments

The Agency is authorized to develop and offer incentives that will attract applicants to developments, or portions thereof, which have been difficult to market. *This authorization waives certain provisions of Section 3(a)(2) and 3(a)(3)(A) of the 1937 Act and 24 C.F.R. 960 subpart B as necessary to implement the Agency's Annual MTW Plan.*

7. Simplification of the Development and Redevelopment Process for Public Housing

This authorization waives certain provisions of Sections 4, 5, 9, 24, 32 and 35 of the 1937 Act and 24 C.F.R. 941 as necessary to implement the Agency's Annual MTW Plan.

- a. The Agency may, at its own discretion, allow any authorizations and regulatory relief granted to the Agency pursuant to this MTW Agreement to inure to the benefit of the Agency's Partners with respect to MTW eligible activities, and HUD hereby agrees to the amendment of any and all evidentiaries necessary to implement the least restrictive regulatory requirements allowable.
- b. The Agency is authorized to establish reasonable low-income homeownership programs, such as a lease-to-own program, that are not limited by the existing public housing homeownership requirements, provided that units can only be sold to current public housing residents and that any disposition of current public housing units must be approved in advance by HUD. Any disposition application will be submitted and processed in accordance with this Agreement.

8. Streamlined Demolition and Disposition Procedures

The Agency may choose to follow HUD's "Streamlined Processing Instructions for Disposition, Demolition, and Disposition/Demolition Applications from MTW Agencies."

9. Simplification of Property Management Practices

The Agency is authorized to simplify property management practices as follows:

- a. The Agency is authorized to deploy a risk management approach in establishing property and system inspection protocols and frequencies in lieu of the HUD requirements of annual inspections by Agencies, as long as these protocols assure that housing units assisted under the demonstration meet housing quality standards approved or established by the Secretary. *This authorization waives certain provisions of Section 6 (f) of the 1937 Act and 24 C.F.R. 902-Subpart B as necessary to implement the Agency's Annual MTW Plan.*

- b. The Agency is authorized to develop and adopt a new form of local lease and establish community rules, grievance procedures, tenant self-sufficiency requirements and reasonable tenant fees based on proven private management models (subject to State and local laws), provided that no-cause evictions are not permitted. *This authorization waives certain provisions of Section 6 (l) of the 1937 Act and 24 C.F.R. 966 Subparts A and B as necessary to implement the Agency's Annual MTW Plan.*
10. Special Admissions and Occupancy Policies for Certain Public Housing Communities
 The Agency is authorized to involve a broad spectrum of community stakeholders, including advocacy groups, in a process to explore and adopt reasonable restrictions for occupancy of specific public housing buildings in the Agency's inventory. Buildings, or portions of buildings (floors, units), may be designated as Smoke-Free, Pet-Free or Assisted Living (or other similar reservations). The Agency may establish admissions preferences in order to establish these special occupancy requirements. A key goal of this initiative will be to ensure that the Agency is able to maintain and improve the quality of life in the Agency communities. These reservations or policies must not have a disparate impact on protected classes and must be operated in a manner that is consistent with the requirements of Section 504 of the Rehabilitation Act. Any such designations or policies will include adequate safeguards for the disabled, including protections for disabled persons who are Agency residents and those seeking housing assistance. Residents can voluntarily participate in any of the services provided. Once adopted, the designations or policies will be updated and reviewed as part of the Annual MTW Plan and Report submitted by the Agency for HUD's review. In particular, the Agency will review the demographic make-up of its current resident population and applicants to assess the need for and support any changes to its designations or policies. *This authorization waives certain provisions of Sections 3, 6, 7, 16, and 31 of the 1937 Act and 24 C.F.R. 945 subpart C, 960 Subparts B, D, E and G as necessary to implement the Agency's Annual MTW Plan.*
11. Rent Policies and Term Limits
 The Agency is authorized to determine family payment, including the total tenant payment, the minimum rent, utility reimbursements and tenant rent. The Agency is authorized to adopt and implement any reasonable policies for setting rents in public housing including but not limited to establishing definitions of income and adjusted income, or earned income disallowance that differ from those in current statutes or regulations. The Agency is authorized to adopt and implement term limits for its public housing assistance. Such policies must include provisions for addressing hardship cases. *This authorization waives certain provisions of Section 3(a)(2), 3(a)(3)(A) and Section 6(l) of the 1937 Act and 24 C.F.R. 5.603, 5.611, 5.628, 5.630, 5.632, 5.634 and 960.255 and 966 Subpart A as necessary to implement the Agency's Annual MTW Plan.*
12. Design Guidelines
 The Agency is authorized to establish reasonable and modest design guidelines, unit size guidelines and unit amenity guidelines for development and redevelopment activities that will replace HUD guidelines with guidelines that reflect local marketplace conditions for quality construction in its locality so long as all units meet housing quality standards approved by the Secretary. *This authorization waives certain provisions of Sections 4, 5, and 9 of the 1937 Act and 24 C.F.R. 941.202, 941.203, 941.401, and 941.403 as*

necessary to implement the Agency's Annual MTW Plan.

13. Site Acquisition

The agency is authorized to acquire sites without prior HUD approval, provided that the agency certifies that HUD site selection requirements have been met. *This authorization waives certain provisions of 24 C.F.R. 941.401 as necessary to implement the Agency's Annual MTW Plan.*

14. Commercial Business Venture

The Agency is authorized to enter into commercial business ventures as part of its neighborhood revitalization or affordable housing strategies or other strategies designed to serve as catalysts for revitalization of public housing or surrounding communities. Any venture must be consistent with eligible uses of funds under Sections 8 and 9 of the 1937 Act. *This authorization waives certain provisions of 24 C.F.R. 941 subpart F as necessary to implement the Agency's Annual MTW Plan.*

15. Available Property

The Agency is authorized to make available public housing property including dwelling and non-dwelling spaces and vacant land for the purpose of providing services, programs and capital improvements that benefit residents and program participants. *This authorization waives certain provisions of Section 9 of the 1937 Act and 24 C.F.R. 990 Subpart B as necessary to implement the Agency's Annual MTW Plan.*

16. Total Development Cost (TDC) limits

The agency is authorized to establish reasonable cost formulas for development and redevelopment activities that will replace HUD's TDC limits in order to reflect local marketplace conditions for quality construction in its locality. *This authorization waives certain provisions of Section 6(b) of the 1937 Act and 24 C.F.R. 941.306 as necessary to implement the Agency's Annual MTW Plan.*

D. Authorizations Related to Section 8 Housing Choice Vouchers Only

1. Operational Policies and Procedures

The Agency is authorized to determine the following basic operational policies and procedures for all Section 8 assistance the Agency is provided under section 8(o) of the 1937 Act:

- a. The Agency is authorized to determine the term and content of Housing Assistance Payment (HAP) contracts to owners during the term of the MTW demonstration. However, any revised HAP contract must include language noting that the funding for the contract is subject to the availability of Appropriations. *This authorization waives certain provisions of Section 8(o)(7) of the 1937 Act and 24 C.F.R. 982.162 as necessary to implement the Agency's Annual MTW Plan;*
- b. The Agency is authorized to determine the length of the lease period, when vouchers expire and when vouchers will be reissued. *This authorization waives certain provisions of Sections 8(o)(7)(a), 8(o)(13)(F) and 8(o)(13)(G) of the 1937 Act and 24 C.F.R. 982.303, 982.309 and 983 Subpart F as necessary to implement the Agency's Annual MTW Plan;*

- c. The Agency is authorized to define, adopt and implement a reexamination program that differs from the reexamination program currently mandated in the 1937 Act and its implementing regulations. *This authorization waives certain provisions of Section 8(o)(5) of the 1937 Act and 24 C.F.R. 982.516 as necessary to implement the Agency's Annual MTW Plan;*
- d. The Agency is authorized to determine a damage claim and/or vacancy loss policy and payment policy for occupied units that differs from the policy requirements currently mandated in the 1937 Act and its implementing regulations. Damage and vacancy authority are subject to state and local laws. *This authorization waives certain provisions of Section 8(o)(9), of the 1937 Act and 24 C.F.R. 982.311 as necessary to implement the Agency's Annual MTW Plan;*
- e. The Agency is authorized to determine the percentage of housing voucher assistance that it is permitted to project-base, and criteria for expending funds for physical improvements on those units that differs from the percentage and criteria requirements currently mandated in the 1937 Act and its implementing regulations. *This authorization waives certain provisions of Section 8(o)(13) of the 1937 Act and 24 C.F.R. 983 as necessary to implement the Agency's Annual MTW Plan;*
- f. The Agency is authorized to determine property eligibility criteria, including types of units currently prohibited by Section 8 regulations, as well as shared living facilities. If the Agency chooses to use this authorization, it will need to provide a transition plan to both the affected residents and HUD prior to the end of the demonstration. *This authorization waives certain provisions of Section 8(p) of the 1937 Act and 24 C.F.R. 983.53-54 and 982 Subparts H and M as necessary to implement the Agency's Annual MTW Plan; and*
- g. The Agency is authorized to establish its own portability policies with other MTW and non-MTW housing authorities. *This authorization waives certain provisions of Section 8(r) of the 1937 Act and 24 C.F.R. 982 Subpart H as necessary to implement the Agency's Annual MTW Plan.*

2. Rent Policies and Term Limits

- a. The Agency is authorized to adopt and implement any reasonable policy to establish payment standards, rents or subsidy levels for tenant-based assistance that differ from the currently mandated program requirements in the 1937 Act and its implementing regulations. The Agency is authorized to adopt and implement any reasonable policies to calculate the tenant portion of the rent that differ from the currently mandated program requirements in the 1937 Act and its implementing regulations. *This authorization waives certain provisions of Sections 8(o)(1), 8(o)(2), 8(o)(3), 8(o)(10) and 8(o)(13)(H)-(I) of the 1937 Act and 24 C.F.R. 982.508, 982.503 and 982.518, as necessary to implement the Agency's Annual MTW Plan;*

- b. The Agency is authorized to determine contract rents and increases and to determine the content of contract rental agreements that differ from the currently mandated program requirements in the 1937 Act and its implementing regulations. *This authorization waives certain provisions of Sections 8(o)(7) and 8(o)(13) of the 1937 Act and 24 C.F.R. 982.308, 982.451 and 983 Subpart E as necessary to implement the Agency's Annual MTW Plan;*
- c. The Agency is authorized to develop a local process to determine rent reasonableness that differs from the currently mandated program requirements in the 1937 Act and its implementing regulations. *This authorization waives certain provisions of Section 8(o)(10) of the 1937 Act and 24 C.F.R. 982.507 as necessary to implement the Agency's Annual MTW Plan;* and
- d. The Agency is authorized to implement term limits for HCV units designated as part of the MTW demonstration. *This authorization waives certain provisions of Sections 8(o)(7) and 8(o)(13)(F)-(G) of the 1937 Act and 24 C.F.R. 982 Subpart L and 983 Subpart E as necessary to implement the Agency's Annual MTW Plan.*

3. Eligibility of Participants

- a. The Agency is authorized to determine income qualifications for participation in the rental assistance program that differ from the currently mandated program requirements in the 1937 Act and its implementing regulations, as long as the requirements that i) at least 75 percent of those assisted under the demonstration are "very low-income" as defined in section 3(b)(2) of the 1937 Act, ii) substantially the same number of low-income persons are assisted under the demonstration as would be without the MTW authorizations contained herein, and iii) a comparable mix of families are assisted under the Agreement as would have been otherwise in Section I.C. of the MTW Agreement are met. *This authorization waives certain provisions of Sections 16(b) and 8(o)(4) of the 1937 Act and 24 C.F.R. 5.603, 5.609, 5.611, 5.628, and 982.201 as necessary to implement the Agency's Annual MTW Plan;* and
- b. The Agency is authorized to adopt and implement any reasonable policy for verifying family income and composition and for determining resident eligibility that differ from the currently mandated program requirements in the 1937 Act and its implementing regulations. *This authorization waives certain provisions of 24 C.F.R. 982.516 and 982 Subpart E, as necessary to implement the Agency's Annual MTW Plan.*

4. Waiting List Policies

The Agency is authorized to determine waiting list procedures, tenant selection procedures and criteria and preferences, including authorizing vouchers for relocation of witnesses and victims of crime that differ from the currently mandated program requirements in the 1937 Act and its implementing regulations. *This authorization waives certain provisions of Sections 8(o)(6), 8(o)(13)(J) and 8(o)(16) of the 1937 Act*

and 24 C.F.R. 982 Subpart E, 982.305 and 983 Subpart F as necessary to implement the Agency's Annual MTW Plan.

5. Ability to Certify Housing Quality Standards

The Agency is authorized to certify that housing assisted under MTW will meet housing quality standards established or approved by HUD. The certification form will be approved or provided by HUD. *This authorization waives certain provisions of Section 8(o)(8) of the 1937 Act and 24 C.F.R. 982, Subpart I as necessary to implement the Agency's Annual MTW Plan.*

6. Local Process to Determine Eligibility

The Agency is authorized to adopt a local process for determining whether units meet certain eligibility requirements, provided such requirements are part of the 1937 Act. *This authorization waives certain provisions of Section 8(o)(13) of the 1937 Act and 24 C.F.R. 983 Subpart D as necessary to implement the Agency's Annual MTW Plan.* This includes, but is not limited to, the following:

- a. The minimum expenditure requirement and the timing of rehabilitation and construction of units.
- b. The type of funds that may be used to rehabilitate or construct units.
- c. Procedures to determine whether or not units meet the Agency's requirements regarding rehabilitation and construction, including what information is required to be submitted by owners to the Agency.

7. Establishment of an Agency MTW Section 8 Project-Based Program

The Agency is authorized to develop and adopt a reasonable policy and process for project-basing Section 8 tenant-based leased housing assistance, which includes the components set forth below:

- a. The Agency is authorized to project-base Section 8 assistance at properties owned directly or indirectly by the Agency that are not public housing, subject to HUD's requirements regarding subsidy layering. If the Agency chooses to project-base Section 8 assistance at such properties, the Agency recognizes and accepts that such units would no longer be eligible for operating subsidy provided under Section 9(e) of the 1937 Housing Act or for future capital funds provided under section 9(d) for those units if it chooses to use this authorization. Project-based assistance for such owned units does not need to be competitively bid, nor are the owned units subject to any required assessments for voluntary conversion. *This authorization waives certain provisions of Sections 8(o)(13)(B and D) of the 1937 Act and 24 C.F.R. 982.1, 982.102 and 24 C.F.R. Part 983 as necessary to implement the Agency's Annual MTW Plan;*
- b. The Agency is authorized to establish a reasonable competitive process or utilize an existing local competitive process for project-basing leased housing assistance at units that meet existing Housing Quality Standards, or any standards developed by the Agency pursuant to this MTW Agreement and approved by the Secretary, and that are owned by non-profit, or for-profit housing entities. *This authorization waives certain provisions of 24 C.F.R. 983.51 as necessary to implement the*

Agency's Annual MTW Plan;

- c. The Agency is authorized to duly adopt, according to the requirements of local law, alternate standards for determining the location of existing, newly constructed or substantially rehabilitated housing to receive subsidy; provided, however, *that in lieu of the Site Selection Standards currently set forth in 24 C.F.R. Section 983.57*, the agency will comply with the following requirements:
 - i. The Agency will comply with the Fair Housing Act and Title VI of the Civil Rights Act of 1964, and implementing regulations thereto, in determining the location of newly constructed or acquired public housing units.
 - ii. Units may be located in the agency's jurisdiction, including within, but not limited to, the following types of urban areas: (1) an area of revitalization that has been designated as such by the governing jurisdiction, including Redevelopment Areas and Enhanced Enterprise Communities, (2) an area where public housing units were previously constructed and were demolished, (3) a racially or economically impacted area where the agency plans to preserve existing affordable housing, (4) in connection with a HOPE VI or other HUD funded master planned development, (5) in areas where a needs analysis indicates that subsidized housing represents a low percentage of the total number of housing units in the area, or (6) relocating units to an area with a lower concentration of public housing units.
 - iii. Conduct a housing needs analysis indicating that there is a real need for the housing in the area; and
 - iv. When developing or substantially rehabilitating six or more Section 8 project-based units, the agency will: (1) advise current residents of the subject properties and representative community groups in the vicinity of the subject property by letter to resident organizations and by public meeting, of the agency's revitalization plan; and (2) certify to HUD in its Annual MTW Report that the comments from Residents and representative community groups have been considered in the revitalization plan. Documentation evidencing that the agency has met the stated requirements will be maintained at the housing authority and submitted to HUD in its Annual MTW Report.
- d. All units that receive project-based Section 8 assistance must meet either (i) existing HQS standards established by the Secretary or (ii) a local standard for communities receiving project-based Section 8 assistance developed by the Agency and approved by the Secretary pursuant to this MTW Agreement, as applicable. *This authorization waives certain provisions of Section 8(o)(8) of the 1937 Act and 24 C.F.R. 982 Subpart I as necessary to implement the Agency's Annual MTW Plan.*

8. Homeownership Program

- a. The Agency is authorized to establish reasonable Section 8 homeownership programs that are not limited by the existing Section 8 homeownership requirements. *This authorization waives certain provisions of Section 8(o)(15) and 8(y) of the 1937 Act and 24 C.F.R. 982.625 through 982.643 inclusive as necessary to implement the Agency's Annual MTW Plan; and*
- b. The Agency is authorized to permit current public housing residents who are on a merged waiting list to obtain a Section 8 homeownership voucher. *This authorization waives certain provisions of Sections 8(o)(15) and 8(y) of the 1937 Act and 24 C.F.R. 982.625 through 982.643 inclusive as necessary to implement the Agency's Annual MTW Plan.*

E. Authorizations Related to Family Self Sufficiency

The Agency is authorized to operate any of its existing self-sufficiency and training programs, including its Family Self-Sufficiency (FSS) Program and any successor programs exempt from certain HUD program requirements. These may include those requirements governing program size or participation, including whether to establish escrow accounts and other rent incentives and whether to establish mandatory self-sufficiency participation requirements. If the Agency receives dedicated funding for an FSS coordinator, such funds must be used to employ a self-sufficiency coordinator. In developing and operating such programs, the Agency is authorized to establish strategic relationships and partnerships with local private and public agencies and service providers to leverage expertise and funding. However, notwithstanding the above, any funds granted pursuant to a competition must be used in accordance with the NOFA and the approved application and work plan. *This authorization waives certain provisions of Section 23 of the 1937 Act and 24 C.F.R. 984 as necessary to implement the Agency's Annual MTW Plan.*

ATTACHMENT D
COMMUNITY-SPECIFIC AUTHORIZATIONS

TO
AMENDED AND RESTATED MOVING TO WORK AGREEMENT
BETWEEN
U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT
AND
SAN DIEGO HOUSING COMMISSION

Authorizations Related to Section 8 Housing Choice Vouchers Only

In addition to the authorizations provided in Attachment C, D.1., the San Diego Housing Commission (Agency) is authorized to determine the inspection protocols and frequencies for both Agency-owned and non-Agency-owned units. The Agency also is authorized to conduct inspections and rent reasonableness determinations for Agency-owned units directly, without engaging an independent third party. The Agency will utilize the same inspection protocol and rent reasonableness methodology for both Agency-owned and non-Agency-owned units.

Notwithstanding any language in this Agreement or its attachments, the Agency shall follow the regulations at 24 CFR 941.202, 941.203, and 983.57.

HOUSING AUTHORITY OF

THE CITY OF SAN DIEGO

RESOLUTION NUMBER HA- 1415DATE OF FINAL PASSAGE DEC 2 2008

WHEREAS, the U.S. Department of Housing and Urban Development [HUD] issued a notice to the San Diego Housing Commission to reinstate it as a Moving to Work agency; and

WHEREAS, on November 21, 2008, the San Diego Housing Commission recommended the Housing Authority authorize the application to HUD for participation in the Moving to Work Program, which provides local flexibility to design and test various approaches for providing and administering housing assistance, including the combining of Section 8 and Public Housing funds; a focus on rent reform and simplification, design processes and practices that achieve greater administrative efficiencies; and

WHEREAS, locally the program will be known as "Moving Forward" to better reflect the agency's intent and broader purpose of the program; and

WHEREAS, HUD requires that the Housing Authority authorize the submission of the application as well as providing certain assurances regarding the elements of the San Diego Moving to Work project; NOW, THEREFORE,

BE IT RESOLVED, that the Housing Authority of the City of San Diego [Authority] does hereby approve for submittal an application to the Department of Housing and Urban Development [HUD], based upon the information described in Housing Authority Report HAR 08-44.


BE IT FURTHER RESOLVED, that the Authority provides the following assurances to HUD regarding the Moving to Work program, to be known in San Diego as "Moving Forward":

1. At least 75% of the families initially assisted under MTW by the Housing Commission will be very low-income families (i.e. families with incomes of less than 50% of area median income).
2. The program establishes a reasonable rent policy that is designed to encourage employment and self-sufficiency on the part of participating families, such as excluding all or a portion of a family's earned (or newly earned) income for purposes of determining rent.
3. That the Commission will continue to assist substantially the same total number of low-income families under the MTW program as would have been served if the HUD funding sources had not been combined.
4. That under the program, the Commission will maintain a comparable mix of families, by family size, as would have been assisted if the HUD funding sources had not been combined.
5. That housing units assisted under MTW meets the housing quality standards established or approved by the Department.
6. That the program complies with Fair Housing and Equal Opportunity Requirements, as listed in 24 CFR Part 5, as well as the Americans with Disabilities Act of 1990.
7. That the Commission will provide HUD with any documentation that the Department needs to carry out its review under the National Environmental Policy Act (NEPA) and other related authorities and otherwise will assist the Department in complying the 24 CFR Part 50 environmental review procedures. The San Diego Housing Commission agrees (i) to

carry out any mitigating measures required by the Department, or select an alternate eligible property, if permitted by the Department, and (ii) not to acquire, rehabilitate, convert, lease, repair, or construct property until the Department approval under 24 CFR is received.

BE IT FURTHER RESOLVED, that the Executive Director of the San Diego Housing Commission or his designee is hereby authorized to execute all necessary documents required to receive such approval.

APPROVED: MICHAEL J. AGUIRRE, General Counsel

By 
Alex W. Sachs
Deputy General Counsel

AWS:mm
11/14/08
Or.Dept: San Diego Housing Comm.
HA-2009-16
MMS#7064

Passed and adopted by the Housing Authority of the City of San Diego on December 2, 2008 by the following vote:

	Yeas	Nays	Excused	Not Present
Scott Peters	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Kevin Faulconer	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Toni Atkins	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Anthony Young	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Brian Maienschein	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Donna Frye	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Jim Madaffer	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Ben Hueso	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

AUTHENTICATED BY:

Scott Peters

Chair of the Housing Authority
of the City of San Diego, California

[SEAL]

Richard C. Gentry

Executive Director of the Housing Authority of the
City of San Diego, California

I HEREBY CERTIFY that the above and foregoing is a full, true and correct copy of RESOLUTION NO. 1403 passed and adopted by the Housing Authority of the City of San Diego, California on December 2, 2008.

By:



Angie Risotti

Deputy Secretary of the Housing Authority
of the City of San Diego, California

SAN DIEGO HOUSING COMMISSION

RESOLUTION NO. 1404

ADOPTED ON DECEMBER 8, 2008

WHEREAS, the San Diego Housing Commission has been authorized by the San Diego Housing Authority to submit a Moving to Work application for status reactivation; and

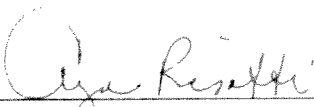
WHEREAS, on December 8, 2008 the San Diego Housing Commission Board of Commissioners authorized the President and Chief Executive Officer (CEO) to execute the Amended and Restated Moving to Work Agreement; and

WHEREAS, on December 8, 2008 the San Diego Housing Commission Board of Commissioners approved the submission of the proposed Annual Moving to Work Plans for January 1, 2009 through June 30, 2009 and July 1, 2009 through June 30, 2010 and additional Department of Housing and Urban Development (HUD) requested information to HUD; and

BE IT FURTHER RESOLVED, that the CEO of the San Diego Housing Commission or his designee is hereby authorized to execute all necessary Moving to Work documents, including the MTW agreement, required to implement and operate the Moving to Work program.

I HEREBY CERTIFY that the abovementioned is true and correct as passed and adopted by the San Diego Housing Commission, of the City of San Diego, California on December 8, 2008.

Vote: Yeas - 5
 Nays - 0
 Absent - 0

By: 
Deputy Secretary

Appendix D

Explanation of How the Housing Commission Took into Account Public Comments

As noted in Appendix A, all public comments were positive and the residents were very receptive to the initiatives. The Housing Commission will ensure, upon implementation of the program, that residents and landlords are sufficiently noticed of any impending programmatic changes. Additionally, information and explanation will be given in order that residents are fully aware of new resources of which they are eligible to avail themselves.

P.O. Box 120191, San Diego, CA 92112-0191

AFFIDAVIT OF PUBLICATION

SAN DIEGO HOUSING COMMISSION

1122 BROADWAY #300

ATTN: VICTORIA JOES

SAN DIEGO, CA 92105

STATE OF CALIFORNIA) ss.
County of San Diego)

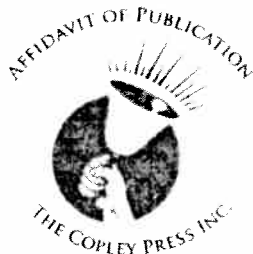
The Undersigned, declares under penalty of perjury under the laws of the State of California: That she is a resident of the County of San Diego. That she is and at all times herein mentioned was a citizen of the United States, over the age of twenty-one years, and that she is not a party to, nor interested in the above entitled matter, that she is Chief Clerk for the publisher of

The San Diego Union-Tribune,

a newspaper of general circulation, printed and published daily in the City of San Diego, County of San Diego, and which newspaper is published for the dissemination of local news and intelligence of a general character, and which newspaper at all the times herein mentioned had and still has a bona fide subscription list of paying subscribers, and which newspaper has been established, printed and published at regular intervals in the said City of San Diego, County of San Diego, for a period exceeding one year next preceding the date of publication of the notice hereinafter referred to, and which newspaper is not devoted to nor published for the interests, entertainment or instruction of a particular class, profession, trade, calling, race, or denomination, or any number of same; that the notice of which the annexed is a printed copy, has been published in each regular and entire issue of said newspaper and not in any supplement thereof on the following date, to-wit

OCTOBER 10, 17, 2008

Marsi Bowers
Chief Clerk for the Publisher



Affidavit of Publication of

Legal Advertisement

Ad # 0010129604

Ordered by: VICTORIA JOES

PUBLIC NOTICE

The San Diego Housing Commission (SDHC) announces its intent to pursue reactivation of its Moving To Work status effective January 1, 2009. The MTW program is a Department of Housing and Urban Development (HUD) program that allows high-performing housing authorities to make program and policy changes to (1) increase the housing choices of low-income families, (2) help residents achieve self-sufficiency, and (3) increase the cost-effectiveness of federal housing programs. As an MTW participant, SDHC is required to develop an MTW Annual Plan that outlines and identifies policies that the housing authority plans to change and programs that may be implemented during the coming year. The Commission is soliciting public comment on the program and policy changes being considered for the balance of Fiscal Year 2009 (through June 30, 2009) and the Fiscal Year 2010 (July 1, 2009 through June 30, 2010). An example of the program and policy changes being considered includes: Receiving HUD funding as a block grant/single fund; assisting more families than the number currently allowed by Federal regulation; creating a deduction for "working families;" standardizing deductions; simplifying the inspection and verification process. Interested persons are invited to view the proposal on the SDHC website:

(www.sdhc.org) beginning October 10, 2009. SDHC will hold a Public Hearing to receive and review comment regarding the draft MTW proposal on Wednesday, November 12, 2009 from 2 p.m. until 4 p.m. at the SDHC office located at 1122 Broadway, Fourth Floor Conference Room. Written comments regarding the MTW policy/program proposals can be submitted by mail prior to November 14, 2009 to the following address: SDHC/MTW, 1122 Broadway, San Diego, California 92101, Attention: Craig Velte. Comments may also be emailed to: craigv@sdhc.org. Project Coordinator at: MTW Contact: Craig Velte at 619.578.7534.

APPENDIX A

Appendix A - Continued

A Public Hearing was held on November 12, 2008 at the Housing Commission's central office to give the public an opportunity to view and discuss the proposed Moving to Work Plan. There were 21 attendees.

The Plan was distributed to the attendees and a PowerPoint presentation was given. Afterwards, questions and comments were addressed by staff.

Public Comments were as follows:

- There was a question about what a "safety net" would be for those households who gain self-sufficiency and surrender their voucher. The proposed policy was explained to the residents' satisfaction.
- One resident asked that staff elaborate more fully on the process and requirements to move from a high-poverty neighborhood to a low-poverty neighborhood. The resident was satisfied and very enthusiastic about the MTW proposals relating to assisting families move from areas of high-poverty.
- Two residents wanted more details about using the voucher towards a homeownership program. Staff outlined the proposal as presented in the Plan.
- The security deposit program to assist households moving from high-poverty to low-poverty neighborhoods garnered enthusiastic comments by a number of the attendees.

The proposed Moving to Work Plan was positively acknowledged by all attendees with no negative comments.

FIRST AMENDMENT

TO

MOVING TO WORK AGREEMENT

BETWEEN

U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

AND

SAN DIEGO HOUSING COMMISSION

This First Amendment to the Moving to Work (“MTW”) Agreement dated January 14, 2009 (“Agreement”) is entered into by and between the United States of America through the U.S. Department of Housing and Urban Development (“HUD”) and the San Diego Housing Commission (“Agency”) and is effective as of April 15, 2010. Unless otherwise defined herein, all capitalized terms used herein shall have the same meanings ascribed to them in the Agreement. The Attachment D is amended as follows:

Attachment D is amended as follows:

Add the following language before Section A:

Use of MTW Funds (added 12/29/09)

The Agency and HUD acknowledge that Section 204(a) of the Omnibus Consolidated Rescissions and Appropriations Act of 1996 (Pub. L. 104-134) provides that an agency participating in the MTW demonstration program may combine public housing operating and capital funds provided under Section 9 of the U.S. Housing Act of 1937 (the “1937 Act”) and voucher program funds provided under Section 8 of the 1937 Act “to provide housing assistance for low-income families, as defined in section 3(b)(2) of the 1937 Act, and services to facilitate the transition to work on such terms and conditions as the agency may propose and the Secretary may approve.”

The Agency and HUD further acknowledge that the terms of the agreement under which the Agency participated in the MTW demonstration program prior to the Amended and Restated MTW Agreement (the “Original MTW Agreement”) did not state that the use of such combined public housing operating and capital funds and voucher program funds (collectively, “MTW Funds”) was restricted to those uses specified in Sections 8 and 9 of the 1937 Act.

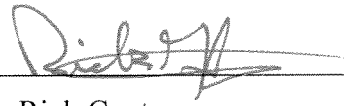
The Agency and HUD hereby agree that they do not intend for the Amended and Restated MTW Agreement to limit or restrict the authority to use MTW Funds as provided by the Original MTW Agreement, that notwithstanding any language to the contrary, those provisions in this Agreement or its attachments that restrict the use of funds to Sections 8 and 9 are repealed, and the Agency may use MTW Funds to provide housing assistance for low-income families, as defined in section 3(b)(2) of the 1937 Act, and services to facilitate the transition to work, whether or not any such use is authorized by Sections 8 or 9 of the 1937 Act, provided such uses are consistent with other requirements of the MTW statute [i.e., including but not limited to the

requirements to maintain a comparable mix of families and serve substantially the same number of families as would have been assisted if the Agency were not in the MTW demonstration, assuring that housing assisted under the demonstration meets housing quality standards established or approved by the Secretary, that at least 75 percent of the families assisted be very low income families, that the agency has established a reasonable rent policy that is designed to encourage employment and self-sufficiency by participating families, that the requirements of sections 12 of the 1937 Act are applied to any housing assisted under the demonstration other than housing assisted solely because of occupancy by families receiving tenant-based assistance, and that Section 18 of the 1937 Act shall continue to apply to public housing notwithstanding the use of any use of the housing under the demonstration] and have been proposed in an Agency's Annual MTW Plan and approved by HUD.


Notwithstanding the above, such funds remain Federal funds, and are subject to any and all other Federal requirements outside of the 1937 Act (e.g., including but not limited to Appropriations Acts, competitive HUD notices of funding availability under which the Agency has received an award, state and local laws, Federal statutes other than the 1937 Act, and OMB Circulars and requirements), as modified from time to time.

IN WITNESS WHEREOF, the parties have caused this First Amendment to be executed by their duly authorized representatives.

SAN DIEGO HOUSING COMMISSION

By: 
Name: Rick Gentry
Its: President and CEO
Date: ~~4.1.10~~ 3.29.10

UNITED STATES DEPARTMENT OF HOUSING
AND URBAN DEVELOPMENT

By: 
Name: Sandra B. Henriquez
Its: Assistant Secretary for PIH
Date: 04/15/2010

ATTACHMENT D
COMMUNITY-SPECIFIC AUTHORIZATIONS

TO
AMENDED AND RESTATED MOVING TO WORK AGREEMENT
BETWEEN
U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT
AND
SAN DIEGO HOUSING COMMISSION

This Attachment D describes and authorizes activities which may be implemented by the San Diego Housing Commission (the "Agency") pursuant to the Moving to Work Agreement between the Agency and HUD dated January 14, 2009, which together with any and all attachments, exhibits, and appendices thereto is hereinafter referred to as the "Agreement."

This Attachment D is updated and revised per the First Amendment to the SDHC's Agreement dated April 15, 2010, which added the Uses of Funds paragraph.

Notwithstanding any other provision of this Agreement the Agency is authorized as follows:

Use of MTW Funds

The Agency and HUD acknowledge that Section 204(a) of the Omnibus Consolidated Rescissions and Appropriations Act of 1996 (Pub. L. 104-134) provides that an agency participating in the MTW demonstration program may combine public housing operating and capital funds provided under Section 9 of the U.S. Housing Act of 1937 (the "1937 Act") and voucher program funds provided under Section 8 of the 1937 Act "to provide housing assistance for low-income families, as defined in section 3(b)(2) of the 1937 Act, and services to facilitate the transition to work on such terms and conditions as the agency may propose and the Secretary may approve."

The Agency and HUD further acknowledge that the terms of the agreement under which the Agency participated in the MTW demonstration program prior to the Amended and Restated MTW Agreement (the "Original MTW Agreement") did not state that the use of such combined public housing operating and capital funds and voucher program funds (collectively, "MTW Funds") was restricted to those uses specified in Sections 8 and 9 of the 1937 Act.

The Agency and HUD hereby agree that they do not intend for the Amended and Restated MTW Agreement to limit or restrict the authority to use MTW Funds as provided by the Original MTW Agreement, that notwithstanding any language to the contrary, those provisions in this Agreement or its attachments that restrict the use of funds to Sections 8 and 9 are repealed, and the Agency may use MTW Funds to provide housing assistance for low-income families, as defined in section 3(b)(2) of the 1937 Act, and services to facilitate the transition to work, whether or not any such use is authorized by Sections 8 or 9 of the 1937 Act, provided such uses

are consistent with other requirements of the MTW statute [i.e., including but not limited to the requirements to maintain a comparable mix of families and serve substantially the same number of families as would have been assisted if the Agency were not in the MTW demonstration, assuring that housing assisted under the demonstration meets housing quality standards established or approved by the Secretary, that at least 75 percent of the families assisted be very low income families, that the agency has established a reasonable rent policy that is designed to encourage employment and self-sufficiency by participating families, that the requirements of sections 12 of the 1937 Act are applied to any housing assisted under the demonstration other than housing assisted solely because of occupancy by families receiving tenant-based assistance, and that Section 18 of the 1937 Act shall continue to apply to public housing notwithstanding the use of any use of the housing under the demonstration] and have been proposed in an Agency's Annual MTW Plan and approved by HUD.

Notwithstanding the above, such funds remain Federal funds, and are subject to any and all other Federal requirements outside of the 1937 Act (e.g., including but not limited to Appropriations Acts, competitive HUD notices of funding availability under which the Agency has received an award, state and local laws, Federal statutes other than the 1937 Act, and OMB Circulars and requirements), as modified from time to time.

A. Authorizations Related to Section 8 Housing Choice Vouchers Only

In addition to the authorizations provided in Attachment C, D.1., the San Diego Housing Commission (Agency) is authorized to determine the inspection protocols and frequencies for both Agency-owned and non-Agency-owned units. The Agency also is authorized to conduct inspections and rent reasonableness determinations for Agency-owned units directly, without engaging an independent third party. The Agency will utilize the same inspection protocol and rent reasonableness methodology for both Agency-owned and non-Agency-owned units.

Notwithstanding any language in this Agreement or its attachments, the Agency shall follow the regulations at 24 CFR 941.202, 941.203, and 983.57.

SECOND AMENDMENT

TO

**AMENDED AND RESTATED MOVING TO WORK AGREEMENT
BETWEEN
U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT
AND
SAN DIEGO HOUSING COMMISSION**

This Second Amendment to the Moving to Work (“MTW”) Agreement (“Agreement”) is entered into by and between the United States of America through the U.S. Department of Housing and Urban Development (“HUD”) and the San Diego Housing Commission (“Agency”) and is effective on the date of execution by HUD. Unless otherwise defined, all capitalized terms used herein shall have the same meanings ascribed to them in the Agreement.

Attachment D is amended as follows:

The following language is added to the San Diego Housing Commission’s Attachment D:

Use of Replacement Housing Factor Funds for Development

The Agency and HUD acknowledge that Section B(1)(a) of Attachment C of this Agreement regarding the ability to combine funds awarded annually pursuant to Section 8(o), 9(d) and 9(e) of the U.S. Housing Act of 1937 (“1937 Act”) into a single, authority-wide funding source (“MTW Funds”) is inclusive of replacement housing factor (“RHF”) funds provided for at 24 CFR 905.10(i) provided the conditions detailed below are met. The Agency may exercise one of the following options in the administration of RHF funds.

- 1) Option 1: The Agency may administer its RHF awards outside of its MTW Funds. These funds must be used in accordance with RHF requirements and may accumulate under an approved RHF Plan or be subject to the two-year obligation and four year expenditure deadlines. The Agency would be eligible for second increment RHF funds, which would be administered outside of the agency’s MTW Funds.
- 2) Option 2: The Agency may combine its first increment RHF funds in its MTW Funds and use the funds for any purpose allowable in this Agreement and approved in an MTW Plan, as detailed in Section B(1)(e) of Attachment C of this Agreement. Obligation and expenditure requirements of Section 9(j) of the 1937 Act still apply to these funds. If administering first increment RHF funds in this way, the Agency forgoes eligibility for second increment RHF funds.
- 3) Option 3: If the Agency combines its first increment RHF funds in its MTW Funds pursuant to Option 2, but wants to receive a second increment of RHF funds, while the Agency may use the funds for any purpose allowable in this Agreement and approved in an MTW Plan, the Agency must spend a portion of its MTW Funds for construction of new public and/or affordable housing. The amount of MTW Funds the Agency must spend on construction of new public and/or affordable units must be equal to or greater than the total amount of RHF

funds included in the MTW Funds. In addition, the number of new public and/or affordable units it constructs must be equal to or greater than the number of public housing units the Agency would have developed if it had not included its RHF funds in its MTW Funds. This is referred to as the “Proportionality Test.” [For example, if an Agency deposits \$500,000 of RHF funds in its MTW Block Grant, the Agency must spend at least \$500,000 of its MTW Block Grant funds on the construction of new public and/or affordable housing. The specific number of new public and/or affordable housing units that must be constructed is determined by dividing \$500,000 by the Total Development Cost (TDC) limit applicable to the type of new units being developed. For example, if the Agency is developing 2-bedroom townhomes and the TDC for these types of units is \$220,000, the Agency must construct a minimum of three new 2-bedroom townhomes ($\$500,000 \div \$220,000 = 2.7$.) This calculation must be done for each year that RHF funds are received by the PHA and included in the MTW Block Grant.]


- i) The applicable TDC will be either the HUD TDC limit for the year in which construction of the units commences or an alternate TDC approved by HUD as part of the MTW approval process.
- ii) The new public and/or affordable units required to be developed may be developed directly by the Agency or developed through a Mixed-Finance transaction.
- iii) Any project which includes construction of public housing units must be approved by HUD following either the Development process (units owned by the Agency) or the Mixed-Finance process (units owned by an entity other than the Agency).
- iv) The Agency must show significant progress on construction of the new public and/or affordable units required during the first increment of RHF funds in order to receive the second increment of RHF funds.
- v) If an Agency chooses to include second increment RHF funds in its MTW Block Grant, then second increment RHF funds will be subject to the Proportionality Test and the same requirements as first increment funds regarding the amount of MTW Block Grant funds that must be spent on the construction of new public and/or affordable housing and the number of units which must be constructed.
- vi) Leveraging requirements still apply to the second increment RHF funds.
- vii) The 2-year obligation and 4-year expenditure deadlines are still applicable to both the first and second increment RHF funds deposited into the MTW Block Grant.
- viii) The new units constructed must be consistent with the MTW Statute and Agreement. In order to develop affordable (non-public housing) units, an Agency must have received prior HUD authority to implement local, non-traditional activities.
- ix) Prior to implementing Option 3, an Agency must amend their MTW Agreements to allow for deposit of RHF Funds in the MTW Block Grant and the receipt of second increment RHF Funds (a standard HUD Amendment must be used).

- x) Prior to implementing Option 3, an Agency must include the development of the new public and/or affordable units in their MTW Plan and include RHF funds in Section 7, the Sources and Uses Chart.
- xi) As long as the Agency has included in its MTW Plan the construction of the new public and/or affordable units and its intention to combine RHF funds in the MTW Block Grant and receive second increment RHF funds, the Agency does not need to submit an RHF Plan to HUD. However, the MTW Plan must include the information required in an RHF Plan, as prescribed by HUD.
- xii) The Agency must include in its annual MTW Report an update on the amount of RHF funds included in the MTW Block Grant, the amount of funds spent on construction of new public and/or affordable housing, the number of units being constructed, and the status of construction. The Agency must show significant progress on construction of units during the first increment of RHF funds in order to receive second increment RHF funds.

Notwithstanding the above, such funds remain Federal funds, and are subject to any and all other Federal requirements outside of the 1937 Act (e.g., including but not limited to Appropriations Acts, competitive HUD notices of funding availability under which the Agency has received an award, state and local laws, Federal statutes other than the 1937 Act, and OMB Circulars and requirements), as modified from time to time.

IN WITNESS WHEREOF, the parties have caused this Second Amendment to be executed by their duly authorized representatives.

SAN DIEGO HOUSING COMMISSION

By: 
Name: Richard C. Gentry
Its: President and CEO
Date: 9.6.2012

UNITED STATES DEPARTMENT OF HOUSING
AND URBAN DEVELOPMENT

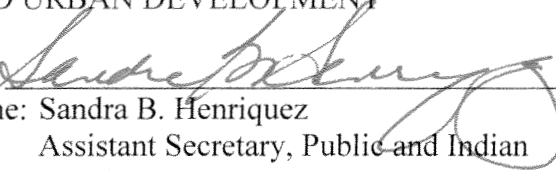
By: 
Name: Sandra B. Henriquez
Its: Assistant Secretary, Public and Indian
Housing
Date: 10/19/2012

Exhibit B



U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT
THE DEPUTY SECRETARY
WASHINGTON, DC 20410-0050

April 14, 2016

Mr. Richard Gentry
Executive Director
San Diego Housing Commission
1122 Broadway, Suite 300
San Diego, CA 92101

Dear Mr. Gentry:

In the 20 years since the authorization of the Moving to Work (MTW) Demonstration program, a number of flexibilities, which have been successfully designed and tested by you and other MTW agencies, have been made available to all public housing agencies (PHAs) across the nation. We are pleased that Congress has now extended the Demonstration through 2028, so that we may continue this great work together.

Pursuant to Section 239 of Title II, Division L of the Consolidated Appropriations Act, 2016 (P.L. 114-113) (The Act), San Diego Housing Commission's (the Agency) current MTW Agreement is hereby modified and extended until the end of the Agency's fiscal year 2028. Further, pursuant to that same act of Congress, and subject to any future acts of Congress, the Agency's Agreement shall be modified to prohibit any statutory offset of any reserve balances equal to four months of operating expenses. Reserve balances that exceed four months of operating expenses shall remain available to the Agency for all permissible purposes under the Agreement unless subject to statutory offset, notwithstanding any contrary term of the Agreement.

Your MTW Agreement shall be modified by the content of the second paragraph of this letter upon receipt of this letter by the Agency. If your Agency would instead prefer to conclude its MTW participation, please follow the process in Section VIII.D. of the Agency's MTW Agreement.

Under the Act, other terms of the Agreement may be modified by mutual agreement between the Agency and HUD. If your Agency would like to discuss modifications to other terms of its MTW Agreement, please contact the Moving to Work Office at mtw-info@hud.gov.

Throughout the next 12 years of the MTW Demonstration, we look forward to learning from the work of MTW Agencies, to improve the programs and services provided to low-income families across the country. We are confident that your locally-driven strategies will continue to identify creative solutions to serve the affordable housing needs of our nation's communities.

Sincerely,



Nani A. Coloretti